

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 28 January 2004

In The Matter of

FRANK BARBER
Complainant

v.

PLANET AIRWAYS, INC.
Respondent

Case No. 2002-AIR-00019

Darin DiBello, Esq.
Coral Gables, Florida
For the Complainant

Caran Rothchild, Esq.
Yvonne Barroso, Esq.
Ft. Lauderdale, Florida
For the Respondent

Before: JEFFREY TURECK
Administrative Law Judge

RECOMMENDED DECISION AND ORDER¹

This proceeding arises under the employee protection provisions of Section 519 of the Wendell H. Ford Aviation and Reform Act for the 21st Century ("AIR 21"), 49 U.S.C. § 42121, *et seq.*, Public Law 106-181, and the regulations thereunder at 29 C.F.R. Part 1979. These provisions prohibit an air carrier, contractor or subcontractor of an air carrier from retaliating against employees who provide information to the employer or federal government or file, testify or assist in a proceeding relating to air carrier safety violations or any violation of any order,

¹Citations to the record of this proceeding will be abbreviated as follows: CX – Complainant's Exhibit; RX – Respondent's Exhibit; TR – Hearing Transcript.

regulation, or standard of the Federal Aviation Administration ("FAA").

Findings of Fact and Conclusions of Law

1. Procedural Background

On February 22, 2002, the Complainant, Frank Barber, filed a complaint with the Occupational Safety and Health Administration ("OSHA"), U.S. Department of Labor ("DOL"), alleging that on February 15, 2002 Respondent Planet Airways, Inc. had terminated his employment as Vice-President/Director of Operations in retaliation for his raising safety concerns with the FAA on February 14, 2002. OSHA conducted an investigation and found that Complainant had engaged in protected activity, but that Respondent had terminated Complainant for nondiscriminatory reasons. OSHA dismissed Complainant's complaint on May 29, 2002, and the parties were notified of OSHA's findings on June 5, 2002. On July 3, 2002, Complainant objected to the findings and requested an administrative hearing.

Pursuant to a *Notice of Hearing and Pre-Hearing Order* dated August 23, 2002, I set a hearing date of November 4, 2002 in either Miami or Ft. Lauderdale, Florida. Despite its prior agreement to the hearing date, Respondent requested a continuance on August 30, 2002. The hearing was rescheduled for December 17, 2002. On November 21, 2002, I rescheduled the hearing again for February 11, 2003, due to Respondent's failure to respond to Complainant's discovery requests in a timely manner. A formal hearing commenced on February 11, 2003, in West Palm Beach, Florida and ended on February 14, 2003. The following exhibits were received into evidence at the hearing: Administrative Law Judge's Exhibit Numbers 1-8; Complainant's Exhibit Numbers A, B, J, S, EE, FF, HH, KK, OO, QQ, UU, YY, ZZ, GGG, QQQ, SSS, WWW, DDDD, JJJJ, VVVV, WWWW, ZZZZ; and Respondent's Exhibit Numbers 1, 3, 21, 28, 30-32, 42, 43, 45-47, 54-61, 65, 66, 72, 80, 83-85, 87, 92, 101, 120, 122, 134, 137, 138, 145, 151, 153, 155, 156, 158, 159, 162, 165-168, 170, 172-174, 176, 185, 187, 210, 221, 234, 238, 239, 646, 651, 699, 705, 712, 720, 726. Post-hearing briefs were filed by the Complainant and Respondent on April 15, 2003 and May 6, 2003, respectively.

2. Summary of the Evidence

a. Complainant and Inspector Halloran

Planet Airways is a small charter airline. Although its headquarters are in Orlando, Florida, most of its 140 employees work in Ft. Lauderdale. It was founded in 1995 by Peter Garrambone and Tony DeCamillis. In addition to being Planet's owners, Mr. Garrambone and Mr. DeCamillis are now its CEO and President, respectively (*e.g.*, TR 795). Planet provides service primarily to Central America and the Carribean (TR 988). At the time Complainant began working for Planet, it had only one airplane and was not certified by the FAA (TR 59, 73, 188).

At the time of the hearing it was certified and had six aircraft (TR 796).

Complainant Frank Barber received a Bachelor of Science degree from the University of Georgia in December 1963. His career in the flying industry began with Eastern Air Lines in January 1967, where he continued to work until January 1991. He held several positions with Eastern including Pilot, Manager of Flight Standards, Manager of Flying, Manager of Pilot Support and Simulator Instructor. During that time he accumulated 20,170 hours of jet pilot time. From May 1991 through October 1991, he worked for Rich International Airlines, Inc. as a Pilot. In October 1991, he began working for Miami Air International, Inc. While at Miami Air, Complainant was a Captain, Check Airman, Simulator/Flight Instructor and Director of Safety. He also helped Miami Air obtain its certification in October 1991.

Complainant began working for Respondent on May 1, 1999 (RX 122; TR 67). He was hired as the Vice-President/Director of Operations and entered into a two-year contract (TR 50-52, 798; CX FF). According to Mr. DeCamillis, Respondent decided to hire Complainant after he was recommended to Planet by the then Vice-President and Director of Marketing at Miami Air, Bob Cosner. Mr. Cosner also recommended Robert Laberge for Planet's Chief Pilot position and Kenneth Pellegrino for the Director of Safety position. Mr. DeCamillis met with all three men and negotiated an employment contract with each of them. Complainant was to receive a yearly base salary of \$90,000 pre-certification, \$97,500 post-certification and \$105,000 with the addition of a third airplane. The contract also provided for two bonuses, one to be given regardless of his performance and one that was performance based (TR 406; CX FF). At the time of his termination, Complainant's salary was \$105,000 (TR 742). Further, Complainant received bonuses in May 2000 and May 2001. Both bonuses were approximately \$18,000 (TR 54-55, 742). According to Mr. DeCamillis, neither bonus was based on Complainant's performance (TR 802; 980-81). Complainant's employment contract terminated on April 30, 2001, and was not renewed in writing. However, according to Complainant, Mr. Garrambone and Mr. DeCamillis praised him and told him that no written contract was needed because he was part of the Planet family (TR 55-56, 405-06). According to Mr. DeCamillis, the owners of Respondent had issues regarding Complainant's behavior and performance and were not willing to renew the contract (TR 803). None of the issues were with regard to Complainant reporting safety violations because he had never reported any safety violations (*id.*). Complainant stayed employed with Respondent voluntarily without a contract.

Complainant's duties and responsibilities as Vice-President/Director of Operations were set forth in the General Operations Manual ("GOM") (RX 2). His duties and responsibilities did not include supervision over the Vice-President of Maintenance, the Director of Maintenance, the Director of Safety, or the Director of Quality Control (TR 800). He also did not have any responsibility over the maintenance department of the airline, but he claimed that there was an overlap of the maintenance and operation departments (TR 409-14). Mr. DeCamillis never indicated to Complainant that he was responsible for the maintenance department. He also never indicated that Complainant was responsible for the Director of Safety because the Director of Safety reports to the President (TR 801).

According to the Complainant, he was the primary liaison with the FAA and his primary job was to achieve certification for Respondent to be a commercial carrier (TR 58-59). Respondent obtained certification on January 6, 2000, approximately eight months after Complainant was hired (TR 66).

Complainant's main contact with the FAA was Inspector Diane Halloran. Inspector Halloran is an aviation safety inspector in the Ft. Lauderdale Flight Standards District Office ("FSDO"). She has been employed by the FAA for seven years (TR 123). In August, 1999, she was assigned to Respondent as the principal for certification purposes (TR 122-24). She replaced Inspector Roseborough, who she states was removed because allegations were made against him by Tony DeCamillis (TR 128). After Respondent became certified in January, 2000, she became the Principal Operations Inspector ("POI") assigned to the airline. In June, 2000, she became the Assistant POI and remained in that position until February 2002 (TR 122-24). Complainant first met Inspector Halloran in August 1999 (TR 70). Throughout his employment with Respondent, he kept in close contact with her and other FAA officials and allegedly reported situations where Respondent was noncompliant with the FAA regulations.

This first time Complainant reported a problem to the FAA was prior to certification. Complainant believed that the Director of Safety, Kenneth Pellegrino, did not complete his manuals, and the manuals were needed for certification (TR 71, 127). Complainant also claimed to discover that Mr. Pellegrino had falsified his resume on two different occasions (TR 73). He brought these matters to Mr. Garrambone's attention and testified that he was rebuffed, so he raised the issue with Inspector Halloran (TR 72-73). Inspector Halloran conducted an investigation into Mr. Pellegrino's background based on his resume and discovered that there were several misrepresentations as to his experience (TR 130-32; CX HH). Based on the investigation, and with the concurrence of Inspector Halloran, Mr. Pellegrino's name was removed from the certification application and he was replaced by another Planet Airways employee, Jeffrey Sicular (TR 169-70). Complainant discussed the situation with Mr. Garrambone prior to taking any action. According to Complainant, Mr. Garrambone became upset because Mr. Pellegrino was a family friend.² Moreover, Respondent had an employment contract with Mr. Pellegrino which Mr. Garrambone believed obligated him to pay Mr. Pellegrino even if he was replaced (TR 72-74). Complainant disagreed with Mr. Garrambone and testified that he wrote a letter to the FAA removing Mr. Pellegrino from his position as Director of Safety and advising of his replacement.³ After Mr. Pellegrino was removed, Mr. Garrambone expressed to Complainant his disappointment in Mr. Pellegrino's removal and his unhappiness in having to give Mr.

²According to Mr. DeCamillis, Mr. Pellegrino was not a close friend of Mr. Garrambone. Rather, Mr. Garrambone and Mr. Pellegrino worked together years earlier. *See infra*.

³Obviously Complainant misspoke, since he could not fire Mr. Pellegrino simply by writing a letter to the FAA. Moreover, according to Mr. DeCamillis, Complainant and Inspector Halloran ultimately let Mr. Pellegrino resign (TR 819).

Pellegrino's replacement a raise (TR 74).

Subsequent to certification, Mr. Pellegrino again became the Director of Safety. According to Inspector Halloran, the FAA must approve a person before they can become the Director of Safety and she believes that Mr. Pellegrino was reassigned as Director of Safety in early 2000 with her approval (TR 170-71). Inspector Halloran agreed to approve Mr. Pellegrino as Director of Safety because Mr. Pellegrino had undergone a few months of education, learning about safety programs, after he was removed the first time (TR 174). In addition, Mr. Sicular became the Director of Training, which left the Director of Safety position open (TR 175).

The next time Complainant came to her with a noncompliance issue was in February or March 2000. Complainant indicated to Inspector Halloran that Respondent wanted to add additional aircraft and he did not believe Respondent could maintain compliance if these aircraft were added. He believed there was not enough staff to handle the increased operations, create the manuals – also known as technical publications – for the additional aircraft, track the training records, and track the flight and duty times, all of which were safety and compliance issues (TR 75-76, 133-35). Complainant discussed the staffing issues with Mr. Garrambone, but according to Complainant Mr. Garrambone was unresponsive and did not approve the staffing changes Complainant wanted to make (TR 77-78). According to Complainant, Mr. Garrambone was stonewalling him because Mr. Garrambone would not approve salaries for staff additions (TR 81). Inspector Halloran considered these issues to be significant safety concerns, so she contacted the manager of the Ft. Lauderdale FSDO and recommended that Respondent be evaluated to alleviate any risk of noncompliance (TR 135, 235). Complainant was officially notified on April 21, 2000 by Bill Weaver, Manager of the Ft. Lauderdale FSDO, that a CSET (Certification Standardization Evaluation Team⁴) evaluation of the operations side of the airline was going to be conducted (TR 82,136; CX KK).⁵ The CSET evaluation was done in the first week of May, 2000, and revealed that the Director of Operations – Complainant – had too many duties and responsibilities and had inadequate support staff to handle additional aircraft; there was a lack of recurrent training for crew members and an inadequate record-keeping system for flight and duty time (TR 137; CX A).

Because Inspector Halloran did not have confidence that the staffing issue would be taken seriously by Mr. Garrambone and Mr. DeCamillis, she arranged a meeting with them hoping to

⁴ A CSET team is made up of FAA employees. It conducts evaluations and investigations when an FSDO determines that there is a problem with a carrier (TR 286).

⁵ Once a CSET evaluation is finished, a report of the observations (something that presents a risk but which is not contrary to the regulations) and/or findings (something contrary to the regulations or the operator's manual as approved by the FAA) is prepared and the carrier must indicate what action will be taken to correct the observations and/or findings (TR 136). If corrective action is taken, then the FAA will not issue a certificate action, civil penalty or enforcement investigative report (TR 198). The CSET evaluation team found five findings and four observations (TR 162, 667).

nail down what they planned on doing to address the staffing issue (TR 138). On May 8, 2000, the parties came to a agreement about hiring additional staff in technical publications, crew scheduling and ground handling and to implement a better system to record flight and duty times (TR 83) (CX OO). Nine days later, additional staff had been hired (CX B; TR 215-17). But Inspector Halloran testified that the staff did not last (TR 139) and staffing problems continued throughout the entire time she worked on Respondent's certificate (TR 151). According to Complainant, Mr. Garrambone was not happy with him or with the agreement and did not want the FAA running his business (TR 84, 95).

In November 2000, Complainant discovered that Mr. Pellegrino was not revising the safety manuals, was not holding safety meetings, failed to initiate a safety newsletter and failed to implement an Aviation Safety Action Program (ASAP). In addition, his behavior had become disruptive to the point that it was harmful to the safety of the airline (TR 96-98). Through a November 20, 2000, memorandum, Complainant notified Mr. Garrambone of the situation and advised him that he wanted Mr. Pellegrino removed (TR 99; CX VVVV). At the time Complainant prepared the November 20, 2000, memorandum, Complainant stated he was aware that Mr. Pellegrino was on a "witch hunt" to try and coerce people to be insubordinate to him and was displaying disruptive behavior (TR 390-91). Complainant explained that his memorandum to Mr. Garrambone did not contain any Federal Aviation Regulation ("FAR") issues because he had already explained them to Mr. Garrambone and Mr. Garrambone refused to do anything, so Complainant tried to appeal to Mr. Garrambone by pointing out Mr. Pellegrino's disruptive behavior (TR 391-92). Mr. Garrambone still refused to remove Mr. Pellegrino, so Complainant went to Inspector Halloran with his accusations against Mr. Pellegrino (TR 100). In response, Inspector Halloran did her own investigation and submitted a letter with her findings to the Complainant and Mr. Garrambone on or about November 21, 2000 (TR 100-02) (CX J). She and the Complainant then had a meeting with Mr. Garrambone. After that meeting, Mr. Garrambone met with Mr. Pellegrino, and following that meeting Mr. Pellegrino either resigned or was fired (TR 101-04, 146; CX WWWW).

According to Complainant, Mr. Garrambone told him that he is supposed to be loyal to Respondent, not the FAA, and Complainant responded that he has an obligation to Respondent, the flying public and the FAA (TR 104-05). Complainant was not terminated after the situation regarding Mr. Pellegrino was resolved (TR 394). Complainant testified that the FAA did not take any action against Planet Airways because Mr. Pellegrino no longer worked for Respondent, thus removing the need to take action (TR 394).

Another incident occurred in June 2001. While Complainant was on vacation, Respondent functioned as a supplemental air carrier by providing sub-service to Frontier Airlines after a hail storm damaged some of Frontier's aircraft. Frontier is a scheduled service carrier and Respondent is a charter carrier. Respondent was not permitted to provide scheduled service as a supplemental air carrier unless there were stranded passengers. Otherwise, an airline must obtain approval from the FAA prior to providing scheduled service (TR 107). Respondent provided sub-service for Frontier Airlines for ten days (TR 108). Upon returning from his vacation,

Complainant received a letter from Inspector Halloran questioning the sub-service. Complainant contacted the CEO and Director of Operations for Frontier Airlines to determine if there had in fact been stranded passengers for ten days. If not, Respondent may have been in violation of the FARs. Frontier's Director of Operations was unable to confirm that they still had stranded passengers, so Complainant advised him that Respondent would cease the sub-service that evening (TR 108-09). Complainant then contacted the FAA and advised it that Respondent was in violation and that all sub-service operations had been suspended (TR 109). Thereafter, he contacted Mr. Garrambone to advise him of the situation. According to Complainant, Mr. Garrambone was upset because Respondent was making a lot of money doing the sub-service for Frontier Airlines. Complainant submitted a letter to the FAA on July 10, 2001, advising the FAA of Respondent's violation and attempting to mitigate the situation so that there would be no enforcement action (TR 111-12; CX DDDD). In addition, on July 20, 2001, Complainant submitted a Voluntary Disclosure Report to the FAA disclosing Respondent's violation of FAR 121.503(d) and FAR 121.521(c)(1) (RX 38). Complainant was not terminated after submitting this report to the FAA (TR 397).

Then in August 2001, the Director of Maintenance, Roy Sykes, and the Director of Quality Control, Bob Burns, complained to Complainant that the Vice-President of Maintenance, Tim Holt, was leaving them out of the loop and that maintenance records were not being properly maintained and tracked (TR 112-13). While Complainant did not have direct control over maintenance, he stated he "had long been sort of the senior company representative - the one who solves various problems at Planet Ft. Lauderdale . . ." (TR 113). Complainant advised Mr. Sykes and Mr. Burns to go to the FAA Principal Maintenance Inspector ("PMI"), Inspector Laird. After consulting Inspector Laird, Mr. Sykes and Mr. Burns returned to Complainant and told him that Mr. Holt and Inspector Laird appeared to be fast friends and that Inspector Laird was not receptive to them. Mr. Sykes and Mr. Burns produced data sheets which track critical air worthiness directives that have time limits on them. The data sheets showed that the tracking was not being done properly (TR 113-15). Complainant arranged for a telephone conference between himself, Mr. Sykes and Mr. Garrambone. According to Complainant, Mr. Garrambone did not want to believe that there was a problem, so Complainant suggested an external audit be done, especially since they hoped to get a contract with the Department of Defense ("DOD") within six months and DOD would perform its own audit (TR 115-16, 304, 849-50). Mr. Garrambone agreed to the external audit and also agreed not to inform Mr. Holt about it in advance (TR 117). Complainant informed Inspector Halloran that an external audit was being conducted to prepare for the DOD audit (TR 154-55).

The audit began in early September, 2001 (TR 304). After approximately 25 to 30 percent of the audit was conducted, the audit company issued a preliminary report. The report confirmed Mr. Sykes and Mr. Burns's concerns. Complainant spoke to Mr. Garrambone about the preliminary findings and tried to convey the urgency of correcting the systemic maintenance problems and the way the maintenance department was being run by Mr. Holt. According to Complainant, Mr. Garrambone did not want to discuss the preliminary findings with him, so Complainant talked to Inspector Halloran. Inspector Halloran told him she could not do anything

because it was a maintenance issue and she only dealt with operations, so she suggested he talk to her supervisor, Howard Hollis (TR 118-19, 306-08). Complainant told Mr. Hollis about the problems found in the audit, characterizing them as “alarming” (TR 308). It turned out that Mr. Hollis was a friend of the President of the audit company, so Mr. Hollis had a discussion with him and told Complainant that the situation was worse than previously conveyed to him. Mr. Hollis also told Complainant that he talked to Inspector Laird and did not get any satisfaction out of him, so he wanted to have a meeting with all of the Respondent’s principals (TR 120, TR 309-10). Mr. Hollis had a meeting with five of the principals: Complainant, the Director of Maintenance (Sykes), the Director of Quality Control (Burns), the Director of Safety (Mike Bainton) and Mr. Garrambone (TR 156). Mr. Hollis warned them that there were major problems and he wanted them fixed (TR 310-11).

Subsequent to this meeting, Mr. Garrambone’s treatment of Complainant changed. According to Complainant, Mr. Garrambone became very cold and distant towards him (TR 311).

Complainant believed that the results of the maintenance audit confirmed the issues raised by Mr. Sykes and Mr. Burns. Complainant considered these issues to be safety issues because air worthiness (proper tracking and inspections) is a safety issue (TR 324). After the audit was complete, Mr. Sykes, Mr. Burns and Mr. Bainton told Complainant that they were not allowed to see the final maintenance audit report (RX 210). According to Mr. Bainton, Mr. Holt would not give him a copy of the final report. Complainant advised Mr. Bainton to go to Mr. Garrambone since he worked for Mr. Garrambone and not Complainant (TR 313).

Sometime between November 1 and November 7, 2001, Baha Moday, then the PMI, informed Mr. DeCamillis that some Planet employees were complaining to him about internal company matters that were not FAA concerns (TR 923-24). In particular, employees were personally attacking each other (TR 928). In response, Mr. DeCamillis held a meeting with Mr. Holt, Mr. Sykes and Mr. Burns and discussed the fact that the things they were going to the FAA with were not critical safety issues, but were operational issues on the daily functioning of the airline and the interaction between employees. Mr. DeCamillis told everyone at the meeting that he wanted to see them working for the benefit of the company and not against one another.

Inspector Laird requested a copy of the audit report from Mr. Bainton, but Mr. Bainton could not give him a copy since he did not have one, so Inspector Laird went to see Inspector Halloran. Complainant was then approached by Inspector Halloran regarding the maintenance portion of the final audit report. Complainant told Inspector Halloran that Mr. Bainton did not have a copy of the report because Mr. Garrambone and Mr. Holt had refused to give him a copy (TR 312-13). Inspector Halloran informed Complainant that the safety manual requires that the Director of Safety receive a copy (TR 314). Complainant told her that she would have to speak to Mr. Bainton and Mr. Garrambone because he did not have any influence over the situation. Later that day, Complainant overheard Inspector Halloran speaking to Mr. Holt and Inspector Laird. Mr. Holt was denying that the Director of Safety was entitled to a copy of the audit report.

Inspector Halloran then asked Complainant to arrange a meeting with Mr. Garrambone and Mr. DeCamillis (TR 313-14). Complainant arranged the meeting for November 14, 2001. A week or two after Inspector Moday first talked to Mr. DeCamillis, he advised Mr. DeCamillis that the problems he had mentioned previously were continuing. So Mr. DeCamillis also called a meeting on November 14, 2001.

At Inspector Halloran's November 14th meeting, which occurred first, she and Mr. Garrambone had a disagreement regarding whether the Director of Safety is required to receive a copy of any maintenance audits. Complainant testified that he pulled the General Maintenance Manual ("GMM") from the shelf and after reviewing it found that the GMM required the Director Safety to obtain a copy of any audits (TR 315-16). Inspector Halloran also advised Mr. Garrambone and Mr. DeCamillis that Mr. Holt would not allow the Director of Quality Control and the Director of Maintenance to have a copy of the final audit results (TR 318).

Later that day, Mr. Holt, Mr. Sykes, Mr. Burns, Complainant, Mr. Garrambone, Mr. DeCamillis and Carell Rodriguez, Respondent's new Human Resources ("HR") Manager, attended the meeting called by Mr. DeCamillis. Mr. Garrambone began the meeting by telling everyone that he was distraught over the whole situation, that his father and brother had passed away from heart attacks in their fifties, that his mother was terminally ill and that he was afraid he was heading in the same direction. He also told everyone that it was not worth having a business if everyone was fighting all the time. He wanted everyone to work as a team and if they did not like it, then they could leave. Mr. DeCamillis then discussed the previous meeting and told the three who attended the first meeting that they needed to work as a team. Mr. Sykes spoke up and said that Mr. Holt and Complainant were the ones not getting along (TR 445-46). Complainant then said something in response and an argument began. Since Mr. DeCamillis felt that he and Mr. Garrambone were not communicating effectively, he told everyone that if the problem could not be resolved by management, then it would be resolved "at corporate" (TR 927). He told everyone to come up with a solution and the meeting was adjourned (TR 923-28). Mr. DeCamillis stated that no safety issues were discussed at the meeting; all of the issues were personal in nature (TR 927). He stated that no one was threatened at the meeting (TR 928-29). Despite Mr. Garrambone's plea, Mr. DeCamillis was aware that the personal attacks continued (TR 929).

Nevertheless, Complainant and Mr. Sykes testified that they felt threatened by Mr. DeCamillis and Mr. Garrambone's comments at the meeting, so they went to Mr. Rodriguez (318-21, 403, 446-47). They told Mr. Rodriguez that they feared retaliation for blowing the whistle on the maintenance issues to the FAA and that they wanted him to tell Mr. Garrambone and Mr. DeCamillis that they were whistleblowers. Shortly thereafter, Complainant and Mr. Garrambone began sending memos back and forth to each other arguing their side of the situation. Mr. Garrambone finally produced a copy of the audit results to the Director of Safety and asked for a report in response to the results (TR 321-22).

After the issues regarding the distribution of the results of the maintenance audit had been

resolved, Mr. Sykes and Mr. Burns continued to report problems they were having with Mr. Holt to the Complainant. Mr. Sykes advised Complainant that he thought Mr. Holt was developing a pretext to terminate or discipline him. Mr. Sykes brought him a copy of a January 30, 2002, letter which he wrote outlining issues that concerned him and his fear of retaliation (TR 326). Based on Mr. Sykes reports, Complainant felt compelled to get involved, so on the morning of February 14, 2002, Complainant contacted Mr. Neff,⁶ the current POI, and explained to him everything that had been going on. Mr. Neff promised to write a memo to Mr. Weaver in support of Complainant's allegations. Despite talking with Mr. Neff, Complainant still felt compelled to go directly to Mr. Weaver. He spoke to Mr. Sykes about going to Mr. Weaver and Mr. Sykes was very reluctant because going to Mr. Weaver was a major event. Later that day, Complainant contacted Mr. Weaver and asked to meet with him to discuss his concerns. Mr. Weaver agreed to meet with him immediately. At the meeting with Mr. Weaver, Complainant explained his concerns and allegations. Mr. Weaver told him he would have Respondent evaluated to determine the carrier's problems and requested a letter from Complainant in order to institute the evaluation (327-30). Prior to this meeting, Complainant had never spoken to Mr. Weaver about his concerns and/or issues with Respondent (TR 727). After the meeting, Complainant went back to his office to begin writing his letter. He also contacted Mr. Bainton and asked if he would also write a letter regarding his concerns to back up Complainant's concerns. Mr. Bainton agreed to write the letter (TR 330-31).

On the evening of February 14, 2002, Complainant spoke to Mr. Garrambone, who asked Complainant if he had completed the revision for flight domestic and the updated letter of compliance. In hindsight, it appeared to Complainant that Mr. Garrambone was making sure all loose ends were tied up prior to terminating Complainant (TR 727). That may well have been the case.

On February 15, 2002, Mr. DeCamillis and Mr. Garrambone arrived at Respondent's Ft. Lauderdale office early in the morning, about 7:00 a.m., with the intention of firing the Complainant. They were hoping to arrive prior to Complainant. In the parking lot, they met Mr. Rodriguez, who had arrived at about 6:30, and he told them that Complainant had already arrived. The three of them waited for a deputy sheriff to meet them. Once the deputy got there, they went inside and asked the deputy to wait in the lobby. They saw Complainant walking to his office from the printer with some documents which were on Planet Airways letterhead. Mr. DeCamillis asked Complainant to meet them in the conference room and Complainant said he could not because he was busy. They followed him into his office. He again asked Complainant to join them in the conference room. Complainant told him that he did not have time for him right then. Mr. DeCamillis then asked Mr. Rodriguez to call up the deputy. Once the deputy was there, he notified Complainant that he was terminated. Mr. Rodriguez gave Complainant a list of things he needed to turn over to them and told him he had five minutes to get his personal belongings.

⁶ Complainant did not advise anyone of his intent to telephone Mr. Neff. He has no knowledge of Mr. Sykes or Mr. Bainton telling anyone that he had a conference with Mr. Neff (TR 725-26).

Anything left behind would be delivered to his residence. Complainant began to throw folders, letterhead, envelopes and computer disks into his brief case and then locked it. Mr. DeCamillis then told Complainant that they needed Respondent's property back, specifically his keys and the computer disks.⁷ Complainant began to hand over his keys and some disks but did not get the things out of his briefcase. Mr. DeCamillis told Complainant that it was Respondent's property and Complainant asked the deputy if they could take the property. The deputy told him that he believed they could get a warrant. Complainant then opened the briefcase and Mr. Rodriguez began going through it. They took anything that had "Planet Airways" on it, which included computer disks. If they were not sure if the disk was Respondent's property, Mr. Rodriguez would put the disk in the computer and check to see if its contents were business or personal in nature. Mr. DeCamillis and Mr. Garrambone went into the conference room to review the documents taken from Complainant. Mr. DeCamillis recalls two letters in particular. Mr. Rodriguez had pulled out two unsealed Planet Airways envelopes and opened them and then called Mr. DeCamillis over to look at them. It turned out that these were Complainant and Mr. Bainton's letters to Mr. Weaver of the FAA. According to Complainant, it appeared that they were looking for his letter to Mr. Weaver because when Mr. DeCamillis found it, he held it up and said something that acknowledged that he found what he was looking for (TR 332-34). Mr. DeCamillis testified that all three of them (he, Mr. Garrambone and Mr. Rodriguez) were surprised to find the letters and had not known anything about them. Mr. DeCamillis started reading one of the letters and asked Mr. Garrambone to read it with him. They went over to the window and began reading them. Mr. Garrambone could not believe what he was reading and told Mr. DeCamillis that they were doing the right thing. *See, e.g.*, TR 332-35, 588-93, 731, 933-37.

Complainant was then reminded that he had to be out of the office in five minutes. He packed his boxes and he was escorted out of the building by Mr. Rodriguez, Mr. Holt and the deputy sheriff, all three of whom were helping him carry his boxes. Complainant felt as if he was paraded out of the building and said it was a humiliating experience (TR 334). But according to Mr. DeCamillis, Complainant was not paraded through the office. They chose to terminate him early in the morning so there would be few other employees around, and Mr. DeCamillis does not remember anyone else being in the office (TR 937-38). To the best of his knowledge, the entire termination process was completed around 8:00 a.m. (TR 939). Complainant admitted that there are more employees at the office at 9:00 a.m. than at 8:00 a.m. (TR 731).⁸

⁷ The computer disks contained copies of Planet Airways manuals (TR 591).

⁸As one would expect, there are some inconsistencies between the versions of the events of the morning of February 15, 2002 provided by Complainant, Mr. Rodriguez and Mr. DeCamillis. However, these inconsistencies are not material to this decision, and therefore I did not discuss the relative merits of one version as compared to the others in discussing the events of that morning.

After he left Respondent's premises, Complainant called Mr. Bainton to tell him that Respondent had his letter to Mr. Weaver. Complainant also called Mr. Weaver and told him that his letter had been seized along with the disk on which he had saved the letter. Mr. Weaver told him to rewrite the letter (CX QQ) and give it to him by the following Tuesday (TR 335-36). He gave the letter to Mr. Weaver and as a result, a CSET evaluation occurred in March, 2002 (TR 337-38).

The FAA ultimately conducted their own investigation, a CSET evaluation (TR 159-61). The CSET evaluation took place in 2002. There was a full evaluation of the maintenance department and an evaluation of some focus items of the operations department (TR 290-91). Inspector Halloran was told by Mr. Weaver that the CSET evaluation was a result of the concerns brought to her attention by Complainant in the fall of 2001 (TR 281). Inspector Halloran had interaction with the CSET team during their evaluation of Respondent even though she was off of Respondent's certificate at that time. She testified that she had never seen a CSET report containing the number of findings and observations it contained (TR 283). She considered the issues raised in the CSET report to be significant safety concerns (TR 285). Some of the maintenance issues included no useable Continuing Airward Surveillance (CAS) program, discrepancies with the hardware, inconsistent records, and problems with matching serial numbers in the office to serial numbers on the aircraft records (TR 294-95).

Inspector Halloran admitted that the maintenance department is not her area of expertise and that the results of the maintenance audit were the responsibility of the PMI. She testified that she got involved because the Director of Safety called her about not receiving the audit results and that sometimes the issues an FAA operations inspector encounters can overlap with maintenance issues. She does not know how the PMI handled the situation (TR 201-02).

According to Inspector Halloran, the compliance issues brought to her attention by Complainant were all major issues or moderate to high risks (TR 144). She considered all of the information given to her by Complainant to be helpful in ensuring Respondent's compliance (TR 166). She also was not aware of any conduct by Complainant where he tried to obfuscate an FAA investigation of Planet Airways (TR 166).

Respondent alleged that Inspector Halloran threatened revocation of its certificate on numerous occasions. Inspector Halloran denied this allegation and testified that she does not have the power to revoke or suspend an airline's certificate (TR 139, 146, 161). Complainant also does not remember Inspector Halloran threatening revocation of Respondent's certificate, and he said that kind of threat would be absurd because the Assistant POI cannot revoke a certificate (TR 339). Inspector Halloran also denied ever telling anyone working for Respondent that the only reason that Respondent got certified was because of the Complainant, and if he goes, she goes, which also means the certificate goes (TR 256).

Inspector Halloran learned of Complainant's termination from either Inspector Laird or Inspector Knapp, the POI for Respondent. She was not told by anyone in respondent's office that they intended to terminate Complainant nor was she told the reason for his termination (TR 165). She has no personal knowledge of whether or not Complainant's meeting with Mr. Weaver on February 14, 2002, was a motivating factor in Respondent's termination of Complainant on February 15, 2002 (TR 246). Neither Mr. Garrambone, Mr. DeCamillis nor Mr. Rodriguez told her that they terminated Complainant because of his whistleblowing activity (TR 248-49). She was surprised when Complainant was terminated because neither she nor Inspector Knapp knew that Complainant was going to be terminated and she was unaware of any provision being made for a temporary Director of Operations (TR 250). When a carrier decides to terminate a Director of Operations, usually a plan is in place and provisions are made with the FAA, all of which takes a period of time to prepare (TR 256). Normally, the carrier writes a letter to the FAA advising of the impending termination and gives a list the candidates for the position. To the best of her knowledge, Respondent failed to take this step because Inspector Knapp did not have any knowledge that Complainant was going to be terminated (TR 257).

Inspector Halloran described her relationship with Complainant as "professional" and testified that she did not have an inappropriate relationship with him (TR 165). However, she did admit to kissing Complainant on the cheek at his 60th birthday/retirement party⁹ after handing him a congratulatory letter from Mr. Weaver. The birthday party was at the end of August, 2001 (TR 166, 168). She also admitted that she had dinner with Complainant at an airport terminal (TR 167).

Inspector Halloran was removed from Respondent's certificate in February 2002, after Mr. Garrambone and Mr. DeCamillis made allegations that she had a sexual relationship with Complainant and abused her authority. She was told the allegations were verbally reported to the manager at Ft. Lauderdale FSDO, Mr. Weaver (TR 122-24). The FAA investigated the allegations and she was told to have no interaction with Respondent until the investigation was closed (TR 254). Approximately a month prior to the hearing, after the investigation did not yield any findings to support the allegations, she was reassigned to Respondent's certificate as the Assistant POI (TR 122-26).

Complainant also denies having a sexual relationship with Inspector Halloran and testified that their relationship was purely professional. The only time they had meals together was on the road, at an airport or on an airplane. None of the meals were social (TR 338-39). Complainant did admit that Inspector Halloran gave him a kiss, either a peck on the cheek or lips, at his surprise end of revenue flying party given by his employees on August 21, 2001. The kiss occurred when Inspector Halloran presented a letter to Complainant from Mr. Weaver (TR 340-41). Complainant testified that he thought it was ridiculous that he was terminated because of an improper relationship with Inspector Halloran. Complainant believes that he and Inspector

⁹ Once a pilot for Part 121 operations turns 60, he/she can no longer fly as pilot in command.

Halloran were only carrying out their responsibilities to keep Respondent compliant.

Regardless of whether the relationship between the Complainant and Inspector Halloran was anything more than a business relationship, their relationship was an unusual one for a high-ranking corporate official and a Government regulator of that corporation. Inspector Halloran was Complainant's confidante. Further, Complainant permitted Inspector Halloran to take an unusually large role in the day-to-day functioning of Planet's Ft. Lauderdale office, which was resented by the staff (*e.g.*, RX 46, 54, 55). When Complainant saw something which he thought was problematic and Mr. Garrambone or Mr. DeCamillis disagreed with him, he would report the problem to Inspector Halloran, who would then pressure Planet Airways to do what the Complainant wanted (*e.g.*, TR 72-73, 77-79, 99-101).¹⁰ He continuously attempted to undermine the authority of Mr. Garrambone and Mr. DeCamillis through the intervention of Inspector Halloran. In fact, it often appears that he was the POI rather than Planet's Director of Operations. And while his conduct may be legally protected, it clearly is not going to engender good will at Planet Airways.

Since Complainant's termination, he has unsuccessfully sought employment as either a Director of Operations, a Chief Pilot, a Director of Safety or other related positions. His employment efforts include sending out two or three resumes a week, subscribing to various aviation employment websites and networking (TR 743-44). Some of the companies he applied for positions with are Southeast Airlines, Falcon Airways, Miami Air, Jet Blue, and Northwest. He has not limited his geographic area during his job search (TR 744). While he has not found a full-time position, he has served as a consultant for Titan Air for which he was paid \$6,000 (TR 743, 748). He has also collected unemployment (TR 743).

Complainant believes that because he blew the whistle, Respondent wanted to terminate him, and Carell Rodriguez was hired to develop a pretext to fire him (TR 342-43). According to Complainant, Mr. Rodriguez corrupted two whistleblower investigations in order to develop the pretext to terminate Complainant (TR 343). Captain Landry and Captain Insua brought whistleblower claims against Respondent in the Fall of 2001 (TR 351, 357-58). Normally, Complainant was the person that dealt with the whistleblower investigations. On these particular investigations, Complainant was precluded from being a part of the investigations (TR 343, 357-58). Complainant claimed to have very good defenses to both claims, but no one wanted to hear them (TR 352). Complainant was blamed for both whistleblower claims and believed that Respondent used the whistleblower claims as a basis for his termination (TR 347, 359).

¹⁰A prime example of this is when Complainant wanted Mr. Garrambone to fire Ken Pellegrino as Director of Safety. When Mr. Garrambone refused to do so, Complainant complained to Inspector Halloran. She, in turn, wrote a letter to the Complainant criticizing Respondent's Safety Department "and the respective personnel responsible for such department." CX J. She followed that up with a meeting with Mr. Garrambone. Shortly thereafter, Mr. Pellegrino's employment with Respondent ended. *See supra* at 6.

Captain Landry went through several suspensions (CX ZZZZ) before he was ultimately terminated. According to Complainant, Mr. Garrambone made the decision to terminate Captain Landry (TR 344, 362, 370). Complainant testified that he had been told to terminate Captain Landry once before by Mr. Garrambone and Mr. DeCamillis, but that he did not because Captain Landry convinced him that he would not cause any further problems. Complainant made the decision not to terminate, but gave Captain Landry a letter which outlined all of the problems Respondent had with him and stated that it was a final warning. Unfortunately, Captain Landry kept hounding Mr. Garrambone until Mr. Garrambone could stand no more and Mr. Garrambone told Complainant that he should have fired him when they told him to. According to Complainant, because Captain Landry knew he was on his final leg, he announced to several of his co-workers that he was not allowed to write things in the log book in order to trigger whistleblower protection. When Mr. Garrambone told Complainant to terminate Captain Landry, Complainant advised him to be careful because he had set himself up as a whistleblower. Mr. Garrambone told Complainant that he would deal with that later and said to write the letter and terminate Captain Landry (TR 344-46).

Mr. DeCamillis's version of the events surrounding Captain Landry's departure from Planet's employ is completely different. According to Mr. DeCamillis, Captain Landry was terminated from the company by Complainant. The Director of Operations has the authority to hire and fire people subordinate to the Director of Operations (TR 822). With this authority, Complainant seemed to hire and fire at will. Occasionally, Complainant would notify the owners that he wanted to hire or fire someone and despite the owners disagreeing with the Complainant's decision, Complainant would take action anyway. Mr. DeCamillis testified that he did not know about the disciplinary actions taken against Captain Landry by Complainant (TR 823). Mr. DeCamillis and Mr. Garrambone were relying on Complainant to conduct the day to day operations. Complainant specifically requested to have full operational control if he was hired as Director of Operations. During his employment, Complainant and Inspector Halloran made it clear that Complainant was to maintain operational control and that the owners were not to interfere (TR 824).

Mr. DeCamillis added that Captain Landry was first suspended on April 2 by Complainant after voicing to the FAA his concern about a tire blowout that occurred in Mexico and giving some advice to Complainant on how to avoid over-scheduling in the future. He was then suspended again for 60 days on May 1 by Complainant after making a log entry that a throttle was out of rig on an aircraft. Finally, Captain Landry was terminated on September 27, 2001, by Complainant. Mr. Garrambone and Mr. DeCamillis did not have anything to do with any of the suspensions or the termination of Captain Landry (TR 826-28, 987; RX 84).

In regard to Captain Insua, according to Complainant, he suspended Captain Insua after he refused to fly. Complainant then spoke to Mr. Garrambone regarding the suspension and Mr. Garrambone told him that he would handle Captain Insua. Mr. Garrambone called Complainant sometime later and told him that Captain Insua had resigned. Mr. Garrambone failed to get it in writing and shortly thereafter, Captain Insua said he did not resign. Mr. Garrambone had

Complainant draft a letter to Captain Insua accepting his resignation (TR 355-56). Complainant denied calling Captain Insua and telling him if he did not resign that he would be terminated (TR 686-88). According to Complainant, he did not terminate Captain Insua (TR 355-56). After Captain Insua resigned, Complainant wrote a letter to Harold Neff reporting that Captain Insua was not qualified to have a first class medical and was a hazard to the flying public. Complainant testified that he wrote the letter because it was Respondent's responsibility to report safety of flight issues to the FAA (TR 677-79; RX 234). After Complainant was terminated, Mr. Rodriguez sent a letter to Captain Insua advising that he may return to his position with Respondent if he got his first class medical certificate¹¹ within 30 days. The Complainant did not believe that Captain Insua qualified for his medical certificate because he did not return to work, but Complainant admitted that he does not know if Captain Insua even tried to obtain his medical certificate (TR 680-81). After Captain Insua filed his whistleblower complaint, Complainant created a list of reasons for reprimanding and disciplining Captain Insua which included "forever not feeling well," "tried to claim fatigue," and "claimed to be sick" (RX 21). During his testimony, Complainant stated that he found out that Captain Insua had malaria after conducting an investigation into why he was sick a lot (TR 681-85). Complainant admitted that he suspended Captain Insua because of his sickness, but stated that he was not taken off payroll, he just was not allowed to fly (TR 683).

According to Mr. DeCamillis, Captain Insua was terminated after an issue arose of whether or not he had resigned. Complainant allegedly called Captain Insua on September 12, 2001, and asked if he had resigned. Captain Insua told him that he had not resigned and Complainant told him that if he did not resign, he would be terminated. Mr. DeCamillis was not aware of this situation at the time it occurred. According to Mr. DeCamillis, Mr. Garrambone did not approve the decision to terminate Captain Insua (TR 829-30, 987).

Mr. DeCamillis first became aware of Captain Landry and Captain Insua's whistleblower complaints in September, 2001, when Mr. Moon, an investigator from OSHA investigating the whistleblower claims, did his first review of the situation. He recalled Mr. Moon coming back in December and spending about two and a half months going over documents and interviewing employees. He also remembered meeting with Mr. Moon in December wherein Mr. Moon communicated some of his findings to him. Mr. Moon then worked on settling the claims. At some point, Mr. Moon went on vacation and his supervisor, Dennis Russell, took over (TR 846).

On December 5, 2001, Complainant was notified that Mr. Moon had ruled against the company on both whistleblower claims and that they decided to settle the claims. Complainant was shocked because Mr. Moon had just begun his investigation and had not talked to him about the claims (TR 353). On December 9, 2001, Complainant sent a memo to Mr. Garrambone complaining about being excluded from the whistleblower investigations and criticizing the way Mr. Rodriguez handled the claims. (TR 354; CX UU; RX 168). Complainant also accused Mr. Moon of "a cursory investigation" and alleged that the only reason Mr. Moon encouraged

¹¹ A captain must renew his medical certificate every six months (TR 681).

Respondent to settle with Captains Landry and Insua was because he did not want any of his cases appealed (TR 692-93; RX 168; CX UU). Complainant felt like he was the only one that could answer a lot of the retaliation charges made by Captains Landry and Insua, but was left out of the investigation. This led him to believe that Respondent did not want to defend the charges (TR 693). Complainant also criticized Mr. Rodriguez's cooperation with Mr. Moon. According to Complainant, Mr. Rodriguez was willing to cooperate with Mr. Moon because it was part of developing a pretext to terminate Complainant (TR 694). In addition, Complainant criticized the internal investigation conducted by Mr. Rodriguez and, with great irony considering Complainant's relationship with the FAA, accused Mr. Rodriguez of "not understanding that he must be an advocate for Planet, and not a pseudo union rep for disgruntled employees, and of not managing bureaucrats, such as Mr. Moon . . . and engaging in macho chest beating"(TR 694).

Finally, Complainant criticized Mr. Moon's investigation into Complainant's whistleblower claim. According to Complainant, during an hour-long meeting between himself and Mr. Moon in May, 2002, Mr. Moon told him that he had not read his file. Shortly thereafter, Mr. Moon dismissed his case. Complainant believes that Mr. Moon's mind was made up prior to conducting any investigation because he had been involved in setting up Complainant's termination. Complainant did not bring Mr. Moon's admission of failing to read his file to the attention of anyone because he had already attempted to remove Mr. Moon from the investigation¹² and that request was denied. He did not think there was any point in making further complaints (TR 695-97).

Complainant admitted that he got complaints from the technical publications personnel about Inspector Halloran. Complainant explained that Inspector Halloran was very strict and picky with the revisions. She did not want any formatting or grammatical errors. According to Complainant, Respondent had previously had problems with getting a revised manual without errors. It also took too long to get the manuals perfected, so they abandoned the traditional way of revising a manual and Inspector Halloran ended up doing more work on the manual, which annoyed the technical publications personnel (TR 672-73). Complainant also testified that after 9/11, an FAA inspector had to be in the office at all times. Since Inspector Halloran had to be in the office anyway, Complainant allowed her to work on revising the manuals on the office computers. However, Complainant stated that she was not given unfettered access to the computers (TR 711-713). Despite testifying that no one ever complained about Inspector Halloran's lack of honesty or sincerity to him, Mr. Sicular sent a letter to Complainant on April 4, 2001, which stated that Inspector Halloran's lack of honesty and sincerity bothered him (TR 674-76; RX 137).

¹² On March 28, 2002, Complainant wrote a letter to Mr. Moon's supervisor and included a letter from a person that indicated that Mr. Moon's mind was made up prior to investigating Complainant's whistleblower claim (RX 699). Cindy Coe, Mr. Moon's supervisor, responded to Complainant's letter and advised him that she felt Mr. Moon would be fair (TR 697-99; RX 712).

When asked about how he treated some of his employees, Complainant did not deny that he referred to employees as incompetent, old and senile. He stated that because of the salary scale offered by Respondent, they had to go through a number of employees to find someone competent. He also testified that he probably made some derogatory comments about employees and supervisors at Planet Airways (TR 373, 388). In addition, Complainant admits to calling one of his employees a f- - ing liar in front of other people¹³ (TR 374-75). He also did not deny mimicking Mr. Garrambone's accent and speech and referring to someone as having been "Garramboned" if they had not been paid properly by Respondent (TR 377-78). He admitted to telling vendors, other employees and FAA personnel that Respondent and/or Mr. Garrambone were cheap or tight with money (TR 383). Complainant also admitted to posting cartoons and other visual depictions which poked fun at other employees. One particular cartoon was of a cow that thought the grass was always greener on the other side and Complainant put an employee's name underneath the cow because she left the company and he knew that she would come back. According to Complainant, he got requests from the employees to post these cartoons and no one ever complained to him about the postings (TR 382). He did hear that one employee, Dilcia Sullivan, complained about the cartoon, but Complainant felt that Mr. Rodriguez coerced the complaint out of her (TR 381-82). He also stated that he was not surprised an employee named Tracy Gold complained about the cartoon because he had to reprimand her numerous times (TR 382).

Respondent also accused Complainant of sexually harassing female employees. He admitted that he danced with several of the female employees at his retirement party and stated that some of the dancing involved touching, grinding and bumping because that is how people dance today. He also believes that the female employees who filed sexual harassment complaints against him were coerced by Mr. Rodriguez (TR 383-85). He did not deny kissing many employees. He testified that kissing the Latin flight attendants is common courtesy because it is part of their culture. He had a sexual relationship with one employee in particular, Nancy Theodore, which began prior to their employment with Respondent and ended within the first year of employment with Respondent (TR 386). Complainant was Ms. Theodore's supervisor (TR 387, RX 3). Finally, he testified that he remembered joking around and asking Mr. Rodriguez if he could spank Dilcia Sullivan as a way of punishing her, but that there was nothing sexual about it (TR 387).

Complainant alleges that he was terminated for his whistleblowing activity, however, he testified that after he filed numerous Voluntary Disclosure Forms with the FAA disclosing various violations of the FARs, he was not terminated (TR 396-99; RX 38, 42, 72). He also failed to file, in writing, any allegations of violations of the FAA regulations by Respondent with the exception of the November 20, 2000, letter to Inspector Halloran regarding Kenneth Pellegrino (TR 724). In addition, the only basis for his allegation that he was terminated for going to Mr. Weaver with his concerns is his assertion that Mr. Garrambone, Mr. DeCamillis and Mr. Rodriguez appeared to

¹³ A lady working at another airline overheard Complainant refer to Victor Carrera in that manner (RX 30).

be looking for the letter and Mr. DeCamillis purportedly declared victory when he found it (TR 728). But as far as Complainant is aware, the only people he may have told about his meetings with Mr. Neff and/or Mr. Weaver, Mr. Bainton and Mr. Sykes, did not tell anyone else about them (TR 726).¹⁴

According to Complainant, the following people are biased against him and are being untruthful: Victor Carrera,¹⁵ Tony DeCamillis, Eduardo Insua, Peter Garrambone, Tracy Gold, Luis Michaels, Kenneth Pellegrino, Anna Hosner,¹⁶ Carell Rodriguez, Mike Hackert, Patricia Smith and Michael Moon (TR 699-707). In fact, Complainant believes there was a conspiracy between Mr. Rodriguez, Mr. Moon of the FAA and apparently Mr. Garrambone to get Complainant fired (TR 694-96). Complainant does not believe that Inspector Neff is biased against him despite the fact that Complainant wrote a letter to Mr. Weaver on April 30, 2001, seeking Inspector Neff's removal (RX 138). According to Complainant, he and Inspector Neff kissed and made up (TR 707-08). Complainant was not sure if Inspector Laird, the PMI, was biased against him, but admitted that they had butt heads a few times. Complainant testified that Inspector Laird made several invalid complaints about operational issues and because Complainant did not agree with him, Complainant wrote a letter to Inspector Laird's supervisor to get matters corrected (TR 710). Complainant is not sure if Inspector Richard Capone is biased against him. Complainant had to write to Inspector Capone's supervisor after he yelled at Respondent's chief pilot for not getting his friend through training (TR 716; RX 221). According to Complainant, Inspector Capone was trying to influence the employment practices of Respondent (TR 717).

b. Carell Rodriguez

At the time of the hearing, Mr. Rodriguez was a Human Resources Manager at Home Depot. He was previously employed by Respondent as its HR Manager from October 30, 2001, to August, 2002 (TR 493, 497). He was hired by Michael Sadlier, the Controller of Respondent,

¹⁴Mr. Sykes believes he was told by Complainant that he met with Mr. Neff on or about February 14, 2002. Mr. Sykes did not meet with Mr. Weaver on February 14, 2002, but recalls Complainant meeting with someone and that he was supposed to attend the meeting also, but was unable to for some reason. He did not tell anyone, including Mr. Garrambone, Mr. DeCamillis, and Mr. Rodriguez, that Complainant was meeting with Mr. Neff or Mr. Weaver or that Complainant was going to draft a letter to Mr. Weaver (TR 476-78).

¹⁵ Complainant demoted Victor Carrera from senior flight attendant and ultimately fired him (TR 374). Complainant accused Mr. Carrera of stealing flight attendant training files (TR 701-02).

¹⁶ According to Complainant, Anna Hosner was upset because her friend, Victor Carrera, was demoted from senior flight attendant. Complainant also accused her of stealing the flight attendant training files along with Victor Carrera (TR 701-02).

and had not met Mr. Garrambone nor Mr. DeCamillis prior to being hired (TR 494, 579). Prior to Mr. Rodriguez becoming HR Manager for Respondent's Ft. Lauderdale location, the only HR person working for Respondent was Paula Murphy and she worked at the corporate office in Orlando. There had never been a local HR person at the Ft. Lauderdale location (TR 663). At no time during his employment was he told that he was hired to get rid of Complainant or that it was his mission to get rid of Complainant (TR 599, 660). Respondent had policies and procedures to prevent sexual harassment and retaliation against employees. He had never met Complainant prior to working for Respondent (TR 495).

When Mr. Rodriguez began working for Respondent, he kept a journal. Within his first few days, he began to get complaints about Complainant and had some employees tell him that Complainant had retaliated against former employees (TR 495-96). Because of the number of complaints he was receiving, he began to keep a journal specifically on Complainant (TR 624-25; RX 120). He did keep another journal with other miscellaneous information regarding his position and the ongoing at Planet Airways. He cannot recall if the notes produced are in their original form or if he transferred them to one journal from various pieces of paper. He faxed the notes to Mr. Garrambone and Mr. DeCamillis sometime in November or December, 2001, because he was having issues with Complainant (TR 627-29).

Sometime during his first week, Mr. Rodriguez went up to the corporate office in Orlando to be cross-trained by the former HR Manager, Paula Murphy. During that training, he learned of the whistleblower complaints filed by Captain Landry, Captain Insua and another Planet Airways employee, James Nelson. All of these complaints concerned the Complainant (TR 629-30). Ms. Murphy also showed Mr. Rodriguez complaints against the Complainant from Anna Hosner and Victor Carrera (TR 630).

On his first day of work, Mr. Rodriguez heard Complainant poking fun at Mr. Garrambone by using the term "Garramboned", by making fun of his Italian background and by saying that Mr. Garrambone was not very smart, which he did in front of Inspector Halloran. When Mr. Rodriguez walked into Respondent's office on his first day, Inspector Halloran was sitting at one of the computers working on the GOM. That was his first encounter with her (TR 498-500).

On Mr. Rodriguez's second day, Complainant criticized Mr. Garrambone for being cheap. At this point, Mr. Rodriguez still had not met Mr. Garrambone (TR 501). Also on his second day, one employee in particular, Tracy Sheridan, voiced her complaints about Complainant to Mr. Rodriguez. She told him that she was sick of Complainant treating females like sex objects and talking about his relationship with Nancy Theodore (TR 501-02).

On his third day of work, another female employee, Tracy Gold, asked him to call her at home because she did not feel comfortable talking to him at the office with Complainant nearby. When he called her that night, she told him that she wanted to resign because Complainant denigrated and made fun of her and other women in the office. Complainant made her cry

repeatedly. She also complained about Inspector Halloran and felt that Inspector Halloran was trying to get her fired (TR 503-04).

On his fourth day, Patty Smith and another associate spoke to him about how women felt uncomfortable around Complainant and that she felt Complainant had the power to fire employees on the spot. According to Mr. Rodriguez, Ms. Smith seemed afraid of Complainant (TR 504).

On November 2 and 5, 2001, Martin Reed, an employee working for Respondent, indicated to Mr. Rodriguez that he wanted to speak to him regarding Complainant, but seemed to feel uncomfortable talking to him in the office. Every time Mr. Reed came into Mr. Rodriguez's office to speak to him, he would begin talking, but then would feel uncomfortable and end up leaving his office (TR 504-05).

On November 6, 2001, he attended the recurrent training at Pan Am where Complainant was training the flight attendants. At the training, in front of four or five female flight attendants, Complainant stuck his face through a life vest hole and stuck his tongue out like he was having oral sex. Mr. Rodriguez found this behavior to be inappropriate and wondered to himself how many lawsuits Respondent had because of the Complainant (TR 506-07).

On November 9, 2001, Mr. Rodriguez and Complainant had a disagreement about placing an ad for flight attendant class in the local newspaper. Complainant wanted Mr. Rodriguez to place the ad and Mr. Rodriguez refused to do so unless he got permission from Mr. Garrambone, his immediate supervisor (TR 507).

On November 14, 2001, Mr. Garrambone and Mr. DeCamillis held a meeting with most of the management staff, including Complainant, Mr. Sykes, Mr. Holt, Mr. Burns, Jim Finney and Mr. Rodriguez, to discuss management's failure to work together. According to Mr. Rodriguez, neither Mr. Garrambone nor Mr. DeCamillis threatened anyone at the meeting. After the meeting, Mr. Sykes and Complainant came into Mr. Rodriguez's office. Both of them were upset about the meeting. Mr. Rodriguez recalls Complainant making fun of Mr. Garrambone for trying to get people to feel sorry for him because of his family's medical conditions. Complainant also criticized Mr. Holt and stated that Mr. Holt and the maintenance department had an inappropriate relationship. Finally, Complainant told him that he was a "bullet proof whistleblower" and if anything happened to either him or Mr. Sykes, they were going to shut down the airline and sue the company for millions (TR 510-12).

The next day, Complainant asked Mr. Rodriguez to sit in on a meeting Complainant was having with the maintenance department people, mainly Mr. Holt. Complainant started the meeting off by discussing teamwork between the departments, but the meeting soon turned to Complainant criticizing Mr. Holt and telling him that he micro-managed his people and telling Mr. Holt things he needed to do. There was no discussion of anyone violating any order, regulation or FAR during the meeting (TR 513-14).

The following day, November 16, 2001, Complainant asked Mr. Rodriguez to join him in a meeting he was having with Tracy Gold regarding a letter Complainant received from the FAA about Respondent's training program. According to Mr. Rodriguez, Complainant was very argumentative, blamed Ms. Gold for the letter and told her she needed to follow directions. Ms. Gold told Complainant that she lacked supervision and direction which was why she could not get her job done. Mr. Rodriguez testified that Complainant had a model airplane in his hand and was picking it up and slamming it in an intimidating way to the point that Ms. Gold was almost crying. Ms. Gold explained that it was difficult to get work done with Inspector Halloran hollering all the time and telling her to change this, revise that and make this modification. Complainant told Ms. Gold that since Inspector Halloran is from the FAA, she better do exactly what Inspector Halloran tells her to do. Ms. Gold told Mr. Rodriguez that in her 14 or more years working for airlines, she has never seen an FAA representative have so much control and she thought the daily attacks from Inspector Halloran were very inappropriate (TR 514-15).

That same day, Mr. Rodriguez had a conversation with Patty Smith about Complainant. Ms. Smith told him that she was concerned about the inappropriate behavior displayed by Complainant¹⁷, the possible existence of a sexual relationship between Complainant and Inspector Halloran,¹⁸ that Inspector Halloran was actually writing the manuals for Respondent instead of critiquing them, that Inspector Halloran was disrespectful to the technical publications department employees and that Inspector Halloran was trying to get rid of Tracy Gold (TR 517-20). After their conversation, Ms. Smith wrote a letter to Mr. Garrambone stating her concerns (RX 46). Mr. Rodriguez did not specifically request that Ms. Smith write the letter. He requested that she put any issues she had in writing and give it to him (TR 521-22). Ms. Smith also submitted another statement on December 28, 2001 (RX 60).

Several other employees submitted statements and/or affidavits to attest to Complainant's improper behavior. While Mr. Rodriguez requested a statement from these employees, he testified that he did not coerce anyone into giving a statement. Mr. Rodriguez asked them standard questions and he typed their answers into his computer while the computer was in a position that both he and the employee could see what he was typing. He then printed the statement and asked the employee to correct any errors (TR 524, 526-27). Tracy Gold submitted a statement dated December 13, 2001 (RX 55). Tracy Sheridan submitted a statement on December 21, 2001 (RX 59; TR 576-77). Dilcia Smith, Respondent's receptionist, submitted a statement on December 18, 2001 (TR 578; RX 56). Michael Sadlier faxed his statement to Mr. Rodriguez on December 31, 2001 (RX 61; TR 579). Ms. Smith also submitted a statement in this

¹⁷ According to Ms. Smith, Complainant treated women like sex symbols and flirted with Ms. Smith. He also treated women differently than men by not allowing them to argue, be late, curse or take a vacation. In addition, he posted negative material about Anna Hosner, the Chief Flight Attendant, after she was terminated (TR 519-20).

¹⁸ Complainant and Inspector Halloran would spend two to three hours behind closed doors and blinds in Complainant's office (TR 518).

format on December 27, 2001 (TR 547-48; RX 172).

Lewis Michaels, a Captain for Respondent, also submitted an affidavit to Mr. Rodriguez. According to Mr. Rodriguez, Captain Michaels originally submitted the affidavit to Michael Moon, the OSHA investigator. Captain Michaels's main complaint was that Complainant wrongfully suspended him at Captain Landry's unemployment hearing where Captain Michaels was scheduled to testify (TR 530-32; RX 43). Captain Michaels also submitted another statement in the question/answer format implemented by Mr. Rodriguez (RX 58).

Due to the number of employee complaints about Complainant, Mr. Rodriguez was concerned about Respondent's potential liability (TR 536).

On November 21, 2001, Mr. Moon sent Mr. Rodriguez a facsimile discussing the whistleblower complaints by Captain Landry and another employee, Mr. Ruiz (RX 45). On November 28, 2001, Mr. Moon sent Mr. Rodriguez another letter regarding his onsite investigation of the whistleblower complaints of Captains Landry and Insua and Mr. Ruiz scheduled for December 4, 2001, and requested certain records and interviews with certain employees (RX 47). All three whistleblower complaints were filed prior to Mr. Rodriguez's starting date at Respondent (RX 45; TR 538-40, 629). Captain Landry was suspended a few times by Complainant (once for 60 days) prior to being terminated on September 27, 2001, by Complainant (TR 555, 599). Captain Landry disputed each suspension he received by letter, but there was no record of anyone at Respondent responding to Captain Landry's letters (TR 554-60). Mr. Rodriguez did not ask Complainant if he made the decision to terminate Captain Landry, but based upon his discussions with Captain Landry, Mr. Garrambone and Mr. DeCamillis, he came to that conclusion (TR 606).

Captain Insua was terminated on September 5, 2001, by Complainant (TR 560, 599). Captain Insua believed he was terminated because he refused to fly back to Ft. Lauderdale because he was over his flight hours (TR 560).

Because of the whistleblower complaints and the complaints from the other employees, Mr. Rodriguez decided to do his own investigation, independent of OSHA's investigation. Based on his investigation, he determined that Complainant retaliated against employees if they did something he did not like, he was disrespectful to women, he harassed women and Complainant and Inspector Halloran seemed to have an inappropriate relationship (TR 562-63). No one told him how to direct his investigation or what the outcome should be (TR 563).

According to Mr. Rodriguez, Mr. Moon's investigation revealed similar results. However, Mr. Moon made it clear to Mr. Rodriguez that he was not investigating Complainant; he was investigating the whistleblower complaints made by Captain Landry, Captain Insua and Mr. Ruiz (TR 563-64).

Mr. Moon revealed his conclusion, that there was a preponderance of evidence that

Captain Insua and Captain Landry had been retaliated against, to Mr. DeCamillis, Mr. Garrambone and Mr. Rodriguez at a lunch meeting on December 5, 2001. While Mr. Moon had not concluded his investigation at that time, Mr. Rodriguez believes that Mr. Moon advised them that they should consider settling the claims at that time (TR 564-65, 600-01). According to Mr. Rodriguez, at the same lunch meeting Mr. Moon was informed that the Complainant was going to be terminated (RX 185).

On December 12, 2001, Mr. Rodriguez wrote a letter to Mr. Garrambone summarizing the issues he discovered regarding Complainant (RX 54; TR 542). According to Mr. Rodriguez, he wrote the letter of his own free will and no one told him what to include in the letter (TR 546). The letter stated that there was sufficient evidence to support the decision to terminate Complainant at that time, but that the internal investigation was not complete. At that time, Mr. Garrambone had not made the decision to terminate Complainant (TR 617; RX 54). One of the examples of inappropriate behavior by Complainant given in the letter was his sexual relationship with Nancy Theodore, Respondent's Office Manager at the time. Although Mr. Rodriguez knew that the relationship between Complainant and Ms. Theodore began prior to their employment with Respondent, he did not mention this point in the letter because he believes it is inappropriate for a Vice-President of a company to have a relationship with an employee who reports directly to him/her (TR 634, 637-38).

On December 16, 2001, Mr. Rodriguez sent an email to Mr. Garrambone and Mr. DeCamillis regarding a disagreement he and Complainant had on December 14, 2001 (RX 57). According to Mr. Rodriguez, he was having some problems with the Chief Flight Attendant, Zondra Simms, so he set up a meeting with Ms. Simms and Complainant to discuss the issues he had with Ms. Simms. Complainant disagreed with Mr. Rodriguez's position and defended Ms. Simms by essentially saying that Mr. Rodriguez had no control and that he "ran the show" (TR 552-53).

On January 2, 2002, Mr. Rodriguez faxed Ms. Smith's December 27 and 28, 2001, statements and Michael Sadlier's December 31, 2001, statement to Mr. Garrambone and Mr. DeCamillis (TR 549; RX 173).

On January 10, 2002, Dennis Russell, Mr. Moon's replacement while he was on vacation, emailed Mr. Rodriguez, with copies to Mr. DeCamillis and Mr. Garrambone, to confirm his discussion with Mr. Rodriguez regarding the settlements with Captain Landry and Captain Insua. Mr. Russell attached a schedule setting forth settlement amounts which he deemed reasonable and a closing date of January 19, 2002 (RX 65). Mr. Russell advised Mr. Rodriguez that if the claims were not settled, Respondent would be required to reinstate the employees and pay all losses requested by Captain Landry and Captain Insua (TR 664-65). According to Mr. Rodriguez, they ran into some obstacles during the settlement negotiations and the claims were not settled. Because the claims were not settled, Mr. Moon had to resume his investigation. On January 17, 2002, Mr. Rodriguez faxed to Mr. DeCamillis and Mr. Garrambone a confirmation of an on site investigation on January 27, 2002, which he received from Mr. Moon (TR 566; RX 66). Mr.

Moon submitted his results from his investigation into Captain Landry's and Captain Insua's whistleblower complaints to Mr. DeCamillis on February 19, 2002 (RX 84, 85). In both cases, Mr. Moon determined that Captain Landry and Captain Insua had been involved in protected activity and were retaliated against by Respondent for their protected activity (TR 570-71). Within days of Mr. Moon's report, Respondent settled with Captain Landry and Captain Insua (RX 87, 92; TR 572-74).

Prior to settling the claims with Captain Landry and Captain Insua, Mr. Rodriguez discussed the possibility of settlement with Complainant. According to Mr. Rodriguez, Complainant got very upset because he thought that Captain Landry and Captain Insua were not wrongfully terminated and that Respondent should not settle. Mr. Rodriguez did not discuss his investigation or Mr. Moon's investigation with Complainant (TR 575-76).

Mr. Rodriguez explained that no defense was given to the whistleblower complaints because of the evidence presented by Mr. Moon (TR 602). Mr. Rodriguez also did not think Respondent had "a leg to stand on" based on his investigation and Mr. Moon's investigation. Mr. Rodriguez chose not to speak to Complainant about Mr. Moon's investigation into Captain Landry's and Captain Insua's whistleblower claims because he did not want Complainant to know who Mr. Moon was interviewing. He had heard that the last time Mr. Moon was conducting an investigation, Complainant asked the person that had just been interviewed by Mr. Moon what they said. Mr. Rodriguez was worried that if he communicated this information to Complainant that Complainant would do something that was not in the best interest of Respondent. Mr. Rodriguez felt that he had acquired adequate information regarding the whistleblower claims without having to talk to Complainant (TR 604-05). Mr. Rodriguez does not know if Mr. Garrambone or Mr. DeCamillis spoke to Complainant about the whistleblower complaints (TR 605-06).

According to Mr. Rodriguez, the decision to terminate Complainant was made sometime in December 2001. However, a May 10, 2002, letter to Mr. Moon from Mr. DeCamillis states that the decision to terminate Complainant was made no later than September 15, 2001. Mr. Rodriguez stated that if that is what the letter states, then he believes it is accurate (TR 654-56; CX QQQ). Complainant could not be terminated until a replacement had been found because a carrier cannot operate without a Director of Operations (TR 580, 644). Mr. Rodriguez did not make an inquiry as to any potential whistleblower activity by Complainant prior to his termination (TR 649), nor was there ever a discussion about any whistleblowing activity by Complainant. Complainant's alleged whistleblowing activity was not a factor in the determination to terminate Complainant (TR 581). Complainant would have been terminated even if he had a valid whistleblower claim (TR 664). Mr. DeCamillis, Mr. Garrambone and Mr. Rodriguez were not aware of any letters or complaints Complainant may have filed with the FAA regarding safety violations when the decision to terminate Complainant was made. Respondent decided to terminate Complainant because he harassed female employees, he retaliated against any employees that spoke up against him, he had poor management skills and he behaved inappropriately (TR 581-82, 650-51). February 15, 2002, was chosen as the date to terminate Complainant because

that is the date that his replacement, Joe Gleason, could begin working. The date was chosen two to three weeks prior to February 15. To prepare for Complainant's termination, Mr. Rodriguez organized the paper work (e.g., statements), arranged to have an officer from Broward County Sheriff's Department on site,¹⁹ and planned to arrive two hours before Complainant normally reported to work (TR 583-84).

On February 13, 2002, Respondent gave a memorandum to Mr. Weaver regarding inappropriate behavior by Inspector Halloran (RX 80). During cross examination, Mr. Rodriguez testified that the memorandum was submitted to the FAA in order to ensure a prompt resolution to the problems Respondent was having with Inspector Halloran. He was also questioned regarding the statement made in the memorandum that Respondent conducted its own investigation into possible misconduct by Inspector Halloran as a result of Mr. Moon's investigation results which were revealed at the December 5, 2001, lunch meeting. He admitted that the statement was incorrect because his investigation actually began earlier (TR 608-16). Mr. Rodriguez also admitted that the statement was taken from a February 5, 2002, memorandum to Mr. DeCamillis and that the statement was incorrect then also (CX GGG; TR 607).

Mr. Rodriguez learned of Complainant's whistleblower claim when he received the official notice from Mr. Moon. Mr. Rodriguez felt the complaint was bogus and that there were no grounds for Complainant to file a whistleblower complaint (TR 596). On April 29, 2002, Mr. Rodriguez wrote a letter to Mr. Moon stating that Complainant's whistleblower complaint was frivolous, without merit and did not deserve further investigation (TR 597; RX 185). His intent in sending the letter to OSHA was to influence the dismissal of Complainant's claim (TR 649). On June 5, 2002, the Regional Administrator for OSHA sent a letter to Complainant advising that its investigation did not yield any evidence to support his complaint that he was terminated in retaliation for voicing safety concerns to the FAA (RX 101; TR 598).

c. Tony DeCamillis

Mr. DeCamillis is the President of Respondent and has been since 1998. As the President, he is responsible for managing all aspects of the company, including maintenance, operations and human resources. From 1995 to 1998, he was the Executive Vice-President (TR 795-96).

Mr. DeCamillis stated that he never told Complainant that he was fourth in the food chain after the owners nor did he ever tell him he could stay as long he liked. He also never heard Mr. Garrambone make those comments. Complainant was not terminated at the time his contract ended because Respondent had been receiving threats regarding revocation of its certificate if any action was taken against Complainant (TR 803-05). The threats began right after certification, in January or February, 2000, at Respondent's first meeting with Inspector Halloran. Mr. DeCamillis testified that he was looking forward to meeting her, but then when the meeting began, Inspector Halloran began discussing the incompetence of the airline and told them that

¹⁹ Arrangements for an officer to be on site were made on February 13, 2002 (RX 174).

Complainant was the only reason Respondent received a certificate. She then said that she had a mortgage to pay and if Complainant goes, she goes, which also means the certificate goes (TR 813-14). After the meeting, he and Mr. Garrambone discussed it with Complainant and told Complainant that they were not going to accept that kind of behavior from a FAA inspector. Complainant told them that he believed he could work with Inspector Halloran and that she was just reacting to the previous certification team and asked for a chance to bring her around (TR 814-15). About three to six months later, Mr. Garrambone attended a meeting with Inspector Halloran and told Mr. DeCamillis that Inspector Halloran repeated the statement about her mortgage (TR 815). Mr. DeCamillis took the threats seriously. Mr. DeCamillis had heard from other FAA representatives that an inspector could over-regulate an airline to the point that they could lose their certificate (TR 903).

In addition to employees who complained to him directly, Mr. DeCamillis learned of employee complaints to Mr. Garrambone. Also, sometimes employees would take their complaints to Mike Sadlier. He also learned of employee complaints from Mr. Rodriguez (TR 806).

The first time he remembers hearing a complaint about Complainant was about three months after Complainant was hired. The Director of Maintenance, Andrew Alexopolis, told him that Complainant was making comments that the owners of the company did not know what they were doing and that he and his wife had money and would own the airline in nine months (TR 806-07). In the fall of 2000, he began receiving complaints about sexual comments being made by Complainant and mismanagement by Complainant. These complainants were verbal. At the time he first heard the complaints, he took them with a grain of salt because he knew people tend to complain about their supervisors and he gave Complainant the benefit of the doubt. However, that changed after the number of complaints increased. The same complaints were coming from different people in different departments. According to Mr. DeCamillis, he personally had discussions with Complainant about the complaints. He discussed the management procedures, the protocol for dealing with employees, documenting the actions taken, and using constructive rehabilitation verses suspension (TR 810). The discussions did not help the situation and the complaints continued (TR 811). He began to take the complaints more seriously and asked Kenneth Pellegrino to conduct an internal investigation into the complaints. Mr. DeCamillis and/or Mr. Garrambone gave Mr. Pellegrino a list of people who had complained, but did not give him any other information in order to make sure Mr. Pellegrino received the same complaints they had received. They also chose Mr. Pellegrino to conduct the investigation because he was independent and only reported to the president, Mr. DeCamillis (TR 807-09). Mr. Pellegrino's investigation revealed complaints consistent with the ones they had previously received. They wanted to terminate Complainant but because of the threats made by the FAA regarding Respondent's certificate, they were afraid to take action.

At one point, Mr. Garrambone called Mr. DeCamillis and sounded optimistic because Inspector Halloran had agreed to a confidential meeting. Mr. Garrambone did not think Complainant would be there because Complainant was on vacation. According to Mr.

DeCamillis, Mr. Garrambone discussed the objective of the meeting with Inspector Halloran (TR 811-12). The objective of the meeting was to discuss the idea of hiring someone to replace Complainant if they found someone more qualified and also to discuss the complaints they had been receiving about Complainant (TR 816-17). He and Mr. Garrambone felt that if they had someone more qualified than Complainant, then the FAA could not deny the exchange because someone more qualified than Complainant would enhance the certificate, safety and operation of the airline (TR 813). The next day, while Mr. Garrambone was at the meeting, he called Mr. DeCamillis and told him that Complainant was at the meeting, that Inspector Halloran called him to the meeting and that they wanted him to fire Mr. Pellegrino. Mr. DeCamillis asked to speak to Complainant and Complainant told him that Inspector Halloran had a career damaging letter against Mr. Pellegrino. Mr. DeCamillis asked if they could wait until he could be there and Complainant told him that Inspector Halloran was going to give the letter to Mr. Pellegrino right away. Mr. DeCamillis then spoke to Mr. Pellegrino and told him that they were not going to fire him at that time and for him to do what he needed to do at the meeting until he could have some control over the situation. Mr. DeCamillis then spoke to Complainant again. Complainant told him that there was nothing they could do and that Inspector Halloran was adamant about serving Mr. Pellegrino with the letter. He asked if Inspector Halloran would allow Mr. Pellegrino to resign and Inspector Halloran agreed to let him resign and agreed to do a different, less threatening letter. Mr. Pellegrino resigned at the meeting (TR 817-19). Mr. DeCamillis found it a little too coincidental that within two weeks after Mr. Pellegrino initiated an investigation into employee complaints against Complainant, Complainant and Inspector Halloran went after Mr. Pellegrino and managed to get him to leave Respondent's employment (TR 819-20). Mr. Garrambone never got the opportunity to speak with Inspector Halloran about replacing Complainant (TR 820).

After that meeting, Mr. DeCamillis felt that Complainant's treatment of employees got worse. Complainant seemed to have more confidence in his relationship with Inspector Halloran and his actions against employees became more bold. After this meeting, pilots starting to complain and Captain Landry and Captain Insua filed whistleblower complaints alleging retaliation and improper conduct by Complainant (TR 821). Although Mr. DeCamillis and Mr. Garrambone were previously told not to take that kind of behavior from an FAA inspector, they still felt threatened by Inspector Halloran and feared that she would revoke their certificate or take some retaliatory action if they took any action against her. According to Mr. DeCamillis, their fear of retaliation by Inspector Halloran was justified because after Complainant was terminated and she was removed from the certificate, she went to the FAA with a box of xeroxed documents regarding Respondent and was responsible for a seven month long CSET evaluation (TR 948-50).

Mr. DeCamillis denied Complainant's allegations that Mr. Garrambone had a close family-like relationship with Mr. Pellegrino. When Mr. Pellegrino was hired, he was introduced as someone that had worked with Mr. Garrambone in the past. When Mr. DeCamillis asked Mr. Garrambone about his past working relationship with Mr. Pellegrino, he stated that they worked together eight to ten years earlier and that he had not seen Mr. Pellegrino since that time. However, Mr. DeCamillis did admit that it is not uncommon for Mr. Garrambone to tell someone

that he is like family to him because he is “a very warm, family oriented person” (TR 942).

On December 5, 2001, Mr. DeCamillis met Mr. Moon with regard to the whistleblower complaints (TR 896). Prior to the meeting, Mr. Garrambone told Mr. DeCamillis that Complainant had conveyed to him that he did not think they should settle. Mr. Garrambone discussed fighting the charges with Mr. Rodriguez and Mr. Rodriguez told him to wait until he heard what Mr. Moon had to say (TR 957-58). Mr. Moon indicated that he was in the final stages of his investigation into Captain Landry and Captain Insua’s whistleblower complaints and that there was substantial evidence indicating that Respondent had retaliated against its employees for reporting safety issues to the FAA. Mr. Moon also stated that he had evidence that when Inspector Halloran would report to Complainant that an employee had reported safety concerns, Complainant would in turn retaliate against the employee with a suspension or termination. Mr. Moon did not believe that Mr. DeCamillis or Mr. Garrambone were involved in the retaliatory conduct. Mr. Moon encouraged settlement of the whistleblower complaints. If the claims were not settled, then the evidence would become public information (TR 896-98). Respondent did not purposely settle the whistleblower claims in order to have a pretext to terminate Complainant. Mr. DeCamillis also testified that a date for Complainant’s termination had not been set at the time of the meeting and Complainant’s termination was not discussed at the meeting. No date for Complainant’s termination had been determined yet because respondent had to have a replacement in place before terminating Complainant (TR 899-900).

Prior to the whistleblower complaints being filed, both he and Mr. Garrambone had a desire to terminate Complainant. However, after the Pellegrino incident, they were more afraid than ever to take action because of Inspector Halloran’s threat to have their certificate revoked. They decided to hire a human resources person, Paula Murphy. Ms. Murphy often discussed the demeaning and condescending way Complainant spoke to her. She confronted Complainant many times with employee complaints and shortly thereafter, Inspector Halloran wrote a letter to Respondent accusing the owners and Ms. Murphy of interfering with the operations of the company. Mr. DeCamillis thought the whole situation was absurd and that Inspector Halloran went beyond the scope of her job by writing the letter. It seemed to him that whenever Complainant had an issue with an employee, he would utilize Inspector Halloran to retaliate against the employee (TR 831-34). On July 14, 2001, Ms. Murphy wrote a letter to Respondent stating that she was offended by the actions taken by Inspector Halloran, that she had always been a professional and that they should take action to clear her name (TR 834; RX 151). Respondent was not able to address the issues raised by Ms. Murphy because both Complainant and Inspector Halloran stood their ground. It appeared to Mr. DeCamillis that Inspector Halloran was interfering with Respondent’s employment issues, which is prohibited by the FARs (TR 836-37).

After Mr. DeCamillis first learned of the whistleblower complaints and the fact that the Department of Labor would send someone to conduct an investigation, he asked the HR manager, Carell Rodriguez, to conduct his own internal investigation (TR 830). He testified that Mr. Rodriguez was hired because Paula Murphy was resigning, not because they wanted to terminate Complainant. Mr. DeCamillis did not instruct Mr. Rodriguez to come up with a case so that

Complainant could be terminated. He also did not instruct Mr. Rodriguez on what the outcome should be of the internal investigation he asked Mr. Rodriguez to perform. Mr. DeCamillis and Mr. Garrambone did not have any involvement in Mr. Rodriguez's investigation of the Complainant (TR 894-95).

The complaints Mr. Rodriguez received from employees were not the only complaints received by Respondent regarding the Complainant and Inspector Halloran. Mr. DeCamillis received complaints from employees prior to Mr. Rodriguez being hired and prior to his investigation. For example:

– On February 8, 2001, Mr. DeCamillis received a copy of an email from Anna Hosner, the chief flight attendant, to Mike Sadlier, the controller at Planet Airways, wherein she was complaining about being treated unfairly, being wrongly accused and wrongfully terminated by Complainant (TR 839; RX 134).

– On August 17, 2001, he received a copy of a facsimile from Katie Lawson wherein she alleges that Inspector Halloran advised the chief pilot not to pass her during the training process. She subsequently was failed on her oral exam, which she believed she passed. Ms. Lawson also stated that Inspector Halloran made comments to her that Respondent's training program was deficient. Finally, Ms. Lawson felt that it was unfair that she should be thrown out because of a feud between the FAA and Respondent (TR 840-843; RX 153).

– On November 18, 2001, Mr. DeCamillis received a copy of an email from Tracy Gold to Mr. Garrambone in which she complained of being harassed by Inspector Halloran and treated unfairly by Complainant (TR 844; RX 155²⁰).

On May 10, 2002, Mr. DeCamillis wrote a letter to Mr. Moon regarding the termination of Complainant. The letter was precipitated by Mr. Moon's investigation into Complainant's whistleblower complaint. Mr. Moon contacted Mr. DeCamillis every now and then to discuss the investigation or to interview him. On this particular occasion, Mr. Moon advised Mr. DeCamillis that Complainant alleged that his whistleblower activities began in November, 2001, and he wanted to know when a determination to terminate Complainant was made (TR 847; CX QQQ).

According to Mr. DeCamillis, it was during September, 2001, that the first step towards finding Complainant's replacement was taken. Planet contacted an executive recruiting firm in Miami, Klaskin, Kushner & Co., who referred them to Mr. Cabasa. Mr. Cabasa had in his employ a Captain, Joe Gleason. Joe Gleason eventually replaced Complainant. Their first meeting with Mr. Cabasa was in late September, 2001, and Mr. DeCamillis spoke to Mr. Gleason shortly thereafter. He then met with Mr. Gleason several more times during November and December,

²⁰ Although RX 134, 153, and 155 are all addressed either to Mr. Sadlier or Mr. Garrambone, Mr. DeCamillis stated that he received a copy of all of the documents and that they all came out of his file (TR 845).

2001. An employment agreement was executed and Mr. Gleason began working at Planet Airways in February, 2002 (TR 848; *see generally* CX QQQ).

On November 27, 2001, Mr. Garrambone sent a memorandum to Complainant regarding the audit results and asked that he review the results, make the appropriate revisions and corrections, provide a time line for the revisions and corrections and to include any other safety issues and concerns he may have (RX 158; TR 854-55). Complainant had received a copy of the audit results on September 26, 2001 (TR 857). In response, Complainant provided a time line and the corrective items, but did not mention any safety concerns (TR 856). Complainant never requested a copy of the maintenance audit from Mr. DeCamillis, but he did request a copy from Mr. Garrambone (TR 887). Mr. Holt received a copy of the maintenance audit on September 7, 2001, and a memorandum from Mr. Garrambone similar to the one Complainant received. Mr. Holt did not relate any safety issues of concern to him (TR 858-59). Mr. Garrambone also sent a copy of both audits to the Director of Safety after he was advised that the Director of Safety had not received a copy along with a similar memorandum (RX 156; TR 860-61). Mr. Bainton, the Director of Safety, did not submit any additional issues which he believed to be of concern and specifically told Mr. DeCamillis that there were no safety issues (TR 861-62). According to Mr. DeCamillis, Mr. Bainton never indicated to him or Mr. Garrambone that he had not received a copy of the audits. They both assumed that Mr. Bainton would go to Mr. Holt for the maintenance audit results and to Complainant for the operation audit results (TR 862-63). On October 9, 2001, Mr. Holt sent a letter to Mr. Bainton advising him that the audit results indicated that there were no air worthiness directives or safety concerns regarding the operation of an aircraft due to maintenance issues (CX WWW; TR 864-65). Neither Mr. Bainton nor Mr. Sykes, the Director of Maintenance, requested a copy of the audit results from Mr. DeCamillis (TR 887).

Mr. DeCamillis testified that the allegations that Respondent did not wish to do anything in response to the audit are absurd and just do not make sense. Respondent paid a lot of money to have an outside auditing firm conduct the audit in order to prepare for the DOD audit. It does not make sense to spend the money and take the time to do it and then not want to do anything to correct the issues revealed in the audit. He also thought it was preposterous that Respondent allegedly did not want to distribute the results (TR 886-87).

After the audit results were distributed, Mr. DeCamillis and Mr. Garrambone had a meeting with Complainant and Inspector Halloran. Complainant advised Mr. DeCamillis and Mr. Garrambone that Inspector Halloran wanted to meet with them, but when they arrived at the meeting, Inspector Halloran asked them why they called the meeting. Apparently, Complainant had called the meeting. Complainant told them that Inspector Halloran had some issues with the audit. Mr. Garrambone told her that it was an internal audit and did not involve the FAA and she should have nothing to do with it. Inspector Halloran then mentioned operational control and Mr. Garrambone told her that he is well aware that Complainant had operational control, but that it was an executive decision by the owners to have the internal audit and it did not concern her. Inspector Halloran then pointed at Respondent's certificate hanging on Complainant's wall and

told them that if they value the certificate, they would not mess with her on this one. The meeting then ended (TR 889-90). No violations of the FARs were discussed and the issue of air carrier safety did not come up at the meeting. According to Mr. DeCamillis, the meeting did not have any effect on the decision to terminate Complainant.

Between November 30, 2001, and December 5, 2001, Mr. Garrambone and Complainant sent several memorandums back and forth to each other. The memorandums expressed an apparent confusion as to who received the audit results (RX 162, 165-67). No safety concerns were expressed in these memorandums (TR 908-15).

On December 9, 2001, Complainant sent a memorandum to Mr. Garrambone regarding Mr. Moon, Mr. Rodriguez and the whistleblower complaints (RX 168²¹). No safety issues were discussed in the memorandum (TR 916-17). In the memorandum, Complainant stated that Mr. Garrambone was personally involved in the termination of Captain Landry and Captain Insua. Mr. DeCamillis testified that he and Mr. Garrambone did not respond to this allegation because by that time the situation with Complainant was “growing considerable” and it was just Complainant’s attempt to create a paper trail (TR 952-53). They also did not respond because Complainant was attacking Mr. Rodriguez in a majority of the memorandum and Mr. Rodriguez provided a memorandum setting forth his version of the events outlined in the memorandum (TR 985-86). Mr. DeCamillis also testified that by the time the memorandum was written, it was becoming “fruitless and counterproductive” to continue to respond to Complainant’s fabrications (TR 954).

On December 10, 2001, Mr. Bainton sent a memorandum to Mr. Garrambone with a copy to Mr. DeCamillis regarding the lack of cooperation in the maintenance planning department with regard to the response to the audit results (RX 651). Mr. DeCamillis testified that no safety issues were discussed in the memorandum (TR 920-22).

On December 16, 2001, Complainant sent a memorandum to Mr. Garrambone and Mr. DeCamillis complaining about Mr. Rodriguez and his treatment of the chief flight attendant, Zondra Simm (RX 170)²². Mr. DeCamillis testified that no safety issues were discussed in the memorandum (TR 919-20).

The DOD audit occurred as scheduled. The audit was supposed to take one to two

²¹ Both Complainant and Respondent submitted a copy of this memorandum into evidence (CX UU; RX 168), but they are not identical. Mr. DeCamillis testified that he received Respondent’s copy (RX 168) and knows this because there are fax numbers at the top of the page which indicate that it was sent at that time (TR 916-17).

²² Both Complainant and Respondent submitted a copy of this memorandum into evidence, but again the documents are not identical (CX VV; RX 170). Mr. DeCamillis testified that he received Respondent’s copy and had not seen Complainant’s copy before (TR 919).

weeks, but the audit team was only there for one and a half days. Mr. DeCamillis recalled a member of the audit team shaking Mr. Garrambone's hand and telling him that it was the cleanest airline they had ever inspected. Despite the successful audit, there was a hitch in Respondent getting the contract. A representative from Scott Air Force Base in Chicago called Respondent and advised Mr. DeCamillis and Mr. Garrambone that he had been contacted by Complainant. Complainant allegedly told the DOD and the FAA that Respondent forged the documents for submission to the DOD. Mr. DeCamillis testified that it was ironic because Complainant prepared the documents himself (TR 866-67).

Complainant and Inspector Halloran were also instrumental in the initiation of a CSET evaluation which lasted seven months. There were 22 findings from the CSET evaluation, but none were safety concerns. If there were safety concerns, there would be an FAA enforcement order. However, Mr. DeCamillis was still concerned with the 22 findings, so he hired a former FAA inspector, Jose Pagan, to consult for the company. Mr. Pagan provided an evaluation of the 22 findings and found that nine of the 22 findings were pursuant to an FAA regulation which did not go into effect until 2003 and that there were no significant issues of noncompliance (TR 867-73; RX 187). Mr. DeCamillis testified that, to the best of his knowledge, a finding is an occurrence that is supported by an FAR or other regulatory policy, and must be responded to by the carrier. An observation is an issue that is not supported by an FAR or regulatory policy (TR 941).

According to Mr. DeCamillis, Complainant never advised him that he thought Respondent was understaffed, either prior to or after certification. He also did not recall ever refusing to hire personnel when requested by Complainant. In fact, Complainant was able to hire the personnel he wanted. Initially, an organizational chart was created to identify the required personnel. The chart was created by himself, Mr. Garrambone and most likely Complainant. If Mr. DeCamillis heard anything about staffing issues, he usually heard that Respondent was over staffed or staffed to capacity (TR 877-78). The one time he heard that Complainant had been complaining to other people that he did not have adequate personnel, Mr. DeCamillis held two different meetings to address the issues and specifically asked Complainant if he had any staffing issues and Complainant told him that he had it covered (TR 880-81).

Mr. DeCamillis also denies Complainant's allegations that Respondent underpaid its employees. Complainant only mentioned an employee's pay scale when that employee was already employed by Respondent. He never mentioned it when they were considering hiring a new person. After Complainant mentioned it to Mr. Garrambone, Mr. DeCamillis asked Mike Sadlier to conduct an industry analysis for various positions including Chief Pilot, Chief Flight Attendant, Director of Maintenance, and Director of Quality Control, and compared the pay scales to airlines that were similar in size to Respondent. According to the analysis, Respondent was the second highest paying airline among similar airlines for almost every position (TR 939-40).

A CSET evaluation was conducted in May, 2000, to arrange for the addition of two new

aircraft. Although Mr. DeCamillis testified that there is no indication in the evaluation that the staffing needs at the time of the evaluation (one airplane) were not being met (TR 879), the CSET report states that the Director of Operations (the Complainant) “carries an excess of duties and responsibilities” (CX A). It goes on to say that the “Director of Operations is not supported by adequate staffing and sufficient personnel to ensure the highest degree of safety in operations.” (*Id.*) Respondent hired a Manager of Crew Scheduling and a Flight Operations Coordinator in response to these findings (CX B).

In June, 2001, Complainant was on vacation and had delegated operational control to Jeffrey Sicular, a Captain for Respondent. During that time, Mr. Garrambone was contacted by Frontier Airlines to provide sub-service for its stranded passengers. Mr. Garrambone conveyed his desire to help Frontier to Captain Sicular. Captain Sicular spoke to Inspector Halloran regarding some of the issues involved in providing sub-service and arranged the flights. Later on, Inspector Halloran brought up the issue of whether there had been stranded passengers because of the amount of time sub-service was provided (TR 882-83). However, Mr. DeCamillis reviewed all of the correspondence between the FAA and Respondent for a seven month period and noted that during that time, Complainant requested 98 similar flights and all were approved by Inspector Halloran. When Complainant wrote a letter to the FAA admitting Respondent was wrong, Mr. DeCamillis and Mr. Garrambone did not know about it. They learned of the letter after Complainant was terminated (TR 883-84).

Mr. DeCamillis testified that prior to the hearing, he was not aware that Complainant ever met with Mr. Hollis. Mr. DeCamillis never met with Mr. Hollis (TR 885-86). Further, at the time Complainant was terminated, Mr. DeCamillis was not aware that Complainant had met with Mr. Neff or Mr. Weaver on February 14, 2002. He was also unaware of Complainant’s letter to Mr. Weaver (TR 892-93).

According to Mr. DeCamillis, Complainant was terminated because of sexual harassment, retaliatory practices, double standard in disciplining employees, defamation of the owners to employees, vendors and the FAA, and improper conduct by a Vice-President (TR 893). Complainant’s termination did not have anything to do his purported filing of a safety concern or violation with a governmental agency (TR 894, 939). Mr. DeCamillis checked the FAA database that maintains all reports of safety concerns and there were no entries showing that Complainant reported a safety concern to the FAA. Captain Landry’s and Captain Insua’s reports are in the database. Since Complainant did not report any safety issues to the owners of Respondent or the FAA, he could not have been terminated because of reporting safety concerns (TR 894). Mr. DeCamillis was aware that Complainant told Mr. Rodriguez that he was a “bulletproof whistleblower”, but he knew for a fact that Complainant had not filed any allegations of safety concerns with the FAA (TR 961). He did not investigate Complainant’s claim that he was a whistleblower because if he was, Respondent would have been notified by the FAA or by the Department of Labor (TR 965). His understanding of Complainant’s statement about being a whistleblower was that if he was terminated then he would blow the whistle on the airline and shut it down. He did not know what Complainant would blow the whistle on (TR 966). He did

talk to Mr. Sykes about Complainant's statement and Mr. Sykes told him that Complainant set up a time for him to meet with Inspector Halloran and Inspector Halloran instructed him on how to be a "bulletproof whistleblower" (TR 967). Mr. DeCamillis concedes that it is possible that Complainant discussed carrier noncompliance with the FAA, however, he was not aware of Complainant discussing noncompliance of safety issues with the FAA. Mr. DeCamillis's understanding of whistleblowing is reporting specific safety concerns with the FAA. In his opinion, tracking the repair of an aircraft's engine is a maintenance issue and until there is a violation, there is not a safety issue (TR 962-63).

Respondent's concern of Inspector Halloran retaliating against them for terminating Complainant was alleviated somewhat in February, 2002, because a replacement was available and because of the amount of complaints they had received against Complainant (TR 950-51).

Although Inspector Halloran testified that she had no notice of Complainant's impending termination, Mr. DeCamillis testified that they followed the proper procedure. He personally met with Mr. Weaver about a week before Complainant was to be terminated and then contacted the agency and informed them of Complainant's replacement. He and his attorney met with Mr. Weaver because he was concerned about the previous threats to revoke the certificate if Complainant was ever terminated and he wanted assurance that it was not going to happen. Mr. Weaver told him that there would be no retaliation and asked him to put his concerns in writing²³ (TR 901, 930-32). The document that Mr. DeCamillis drafted in response to Mr. Weaver's request did not mention the termination of Complainant because Mr. Weaver wanted something in writing about his allegations against Inspector Halloran, not the termination of Complainant. The intent of the memorandum was to convey Respondent's fear of being retaliated against for terminating Complainant. The memorandum does not request the removal of Inspector Halloran from Respondent's certificate (RX 80; TR 943-46). Joe Gleason also contacted the POI in preparation of Complainant's termination. Inspector Halloran was not aware that Complainant was going to be terminated because she had been removed from Respondent's certificate (TR 901-02, 930).

February 15, 2002, was chosen as the termination date because it was the date that Complainant's replacement, Joe Gleason, was able to come to Respondent's office and meet with the employees. Mr. DeCamillis and Mr. Garrambone thought it was important that Mr. Gleason meet with the employees on the same day that Complainant was terminated (TR 929-30).²⁴

Mr. DeCamillis confronted Complainant about having a sexual relationship with Nancy

²³ The meeting took place prior to February 13, 2002, because by that date, Mr. DeCamillis had drafted a document in response to Mr. Weaver's request (TR 932-33; RX 80).

²⁴ Mr. Gleason was only with the company for 10 months. He resigned because the company was moving its Ft. Lauderdale staff to Orlando (TR 976-77).

Theodore and Complainant denied that he had any relationship with her (TR 941).

In a document that lists a chronology of events, there is a statement that 30 signed witness statements were produced in an internal investigation. Mr. DeCamillis believes that he was told that there were approximately 30 statements and that later on, once they were all counted, there were not that many statements. He is not sure if the document was a draft letter to Mr. Walker at the FAA office in Atlanta or if it was a chronology he sent to his lawyers (TR 969-73; CX SSS).

3. Discussion

Under AIR 21:

No air carrier or contractor or subcontractor of an air carrier may discharge an employee or otherwise discriminate against an employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee)

(1) provided, caused to be provided, or is about to provide (with any knowledge of the employer) or cause to be provided to the employer or Federal Government information relating to any violation or alleged violation of any order, regulation, or standard of the Federal Aviation Administration or any other provision of Federal law relating to air carrier safety under this subtitle or any other law of the United States;

(2) has filed, caused to be filed, or is about to file (with any knowledge of the employer) or cause to be filed a proceeding relating to any violation or alleged violation of any order, regulation, or standard of the Federal Aviation Administration or any other provision of Federal law relating to air carrier safety under this subtitle or any other law of the United States;

(3) testified or is about to testify in such a proceeding; or

(4) assisted or participated or is about to assist or participate in such a proceeding.

(49 U.S.C. §42121(a)).

Claimant alleges that Respondent terminated him for voicing safety concerns to the FAA. Respondent alleges that Claimant was terminated because, among other things, he sexually harassed employees, retaliated against employees for filing safety concerns with the FAA and had an inappropriate relationship with an FAA inspector.

Complainant bears the burden of proof and must establish that: (i) he was engaged in protected activity; (ii) that Respondent knew or suspected that he was engaged in protected activity; (iii) he suffered an unfavorable personnel action; and (iv) the circumstances were sufficient to raise an inference that the protected activity was a contributing factor in the unfavorable personnel action (29 C.F.R. §1979.104(b)). If Complainant establishes these elements, Respondent can avoid liability by establishing by clear and convincing evidence that the same unfavorable action would have been taken in the absence of Complainant's protected activity (29 C.F.R. §1979.109(a)).

For the purposes of this decision, it will be presumed that the Complainant engaged in protected activity and that Respondent was aware of it. Further, there is no doubt that Complainant suffered an unfavorable personnel action, since he was fired.

That leaves the final element, that Complainant's protected activity was a factor in his being fired. First, it is clear that Complainant was not fired for his complaints to Mr. Neff and Mr. Weaver of the FAA on February 14, 2002, for the record shows that Respondent had already decided to fire Complainant before February 14th. Conclusive evidence that Respondent did not terminate Complainant because of his activities on February 14, 2002 is RX 174, a February 13, 2002 fax from the Broward County Sheriff's Department Special Details Office to Carell Rodriguez, forwarding an application to employ a Deputy Sheriff as a security officer at Respondent's Ft. Lauderdale office on the morning of February 15, 2002. As was noted earlier, Respondent had a security officer at its office on February 15, 2002 when it informed Complainant that he was being fired. Since Complainant did not call Mr. Neff or make arrangements to meet with Mr. Weaver until February 14, 2002 (TR 327-29), the day of the meeting, that Respondent had already started making arrangements on February 13th for a Deputy Sheriff to come to the Ft. Lauderdale office on February 15th shows that the meeting with Mr. Weaver had nothing to do with its decision to terminate the Complainant. Rather, February 15th was chosen because Complainant's successor, Joe Gleason, could not start at Planet until February 15th (TR 582-83). It is clear that there is no nexus between Complainant's complaints to the FAA on February 14th and his termination on February 15th.

In regard to whether any of Complainant's previous complaints to the FAA played a role in Complainant's termination, Complainant claims that Carell Rodriguez was hired in order to develop a pretext to terminate him and that his termination was a retaliatory action for his whistleblowing activities. Respondent claims that Complainant was terminated because of his conduct towards other employees. The evidence and testimony in this case support Respondent's position that the Complainant was not terminated due to any protected activity.

Mr. Rodriguez testified that he was hired by Mr. Sicular and had not met Mr. Garrambone and Mr. DeCamillis prior to being hired (TR 474, 579). He also testified that he was never told to build a case against Complainant. In addition, Mr. Rodriguez was not the first HR person to work for Respondent, and the previous HR person had received complaints about Complainant. I give great weight to Mr. Rodriguez's testimony. He was very credible and most of his testimony

is corroborated by documentary evidence. He also no longer works for Respondent and therefore has no reason to be biased.

The affidavits from employees complaining about Complainant are very damaging to Complainant's case. There are just too many complaints to believe that they were all coerced by Mr. Rodriguez, as Complainant alleged. Rather, the evidence indicates that the Complainant was arrogant, insensitive and even mean-spirited, and his actions were causing dissension among the staff. Complainant admitted that many of Respondent's employees did not like him. In addition, Mr. DeCamillis testified that he began receiving complaints against Complainant only a few months after he was hired. In fact, he received so many complaints that he had Mr. Pellegrino investigate them. Further, that he criticized and made fun of Respondent's CEO, Mr. Garrambone, in front of Respondent's staff could not have endeared him to Mr. Garrambone.

Ironically, there is also substantial evidence that Complainant retaliated against other employees. Mr. Moon conducted a thorough investigation and found that Complainant terminated Captain Landry and Captain Insua after they voiced safety concerns to the FAA. There is also a statement from Lewis Michaels alleging that Complainant suspended him after Captain Michaels appeared as a witness for Captain Landry at his unemployment hearing. In addition, the evidence reveals that Mr. Pellegrino and Ms. Murphy were the subject of retaliation because of their investigations into Complainant's conduct.

Finally, although the Complainant's relationship with Inspector Halloran may have played a role in his termination, it was not the protected parts of that relationship that may have played that role. Rather, it would have been the appearance, whether factual or not, of a personal relationship that was inappropriate between a high-ranking airline official and an FAA investigator with responsibility for regulating that airline. The relationship between Complainant and Inspector Halloran was, to say the least, unusual. While there is no evidence of a sexual relationship between them, it is clear that their relationship was not simply what would be expected to develop between the Director of Operations of an airline and an FAA inspector. Instead, Complainant treated Inspector Halloran as if she was the person he worked for rather than Mr. DeCamillis and Mr. Garrambone. It seems as if Complainant had an adversarial relationship with his bosses and a conspiratorial relationship with Inspector Halloran. They both seemed to use each other to influence Respondent's employees and principals. While Complainant would be protected for any complaints made to Inspector Halloran regarding violations of FAA or other air safety standards, that he seemed to be conspiring with her to the detriment of Planet Airways and used his relationship with her to intimidate Planet's employees and force Mr. Garrambone and Mr. DeCamillis to make the personnel decisions he advanced is not protected activity.

In short, Respondent had numerous reasons for terminating the Complainant's employment which were unrelated to his protected activities. Based on the foregoing, I find that Complainant was terminated for non-discriminatory reasons, and his claim is denied.

ORDER

IT IS ORDERED that the discrimination complaint of Frank Barber against Planet Airways, Inc. brought under the employee protection provisions of AIR21 is DENIED.

A

JEFFREY TURECK
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: This decision shall become the final order of the Secretary of Labor ("Secretary") pursuant to 29 C.F.R. 1979.110 (2002), unless a petition for review is timely filed with the Administrative Review Board ("Board"), U.S. Department of Labor, Room S-4309, 200 Constitution Avenue, NW, Washington, DC 20210. Any party desiring to seek review, including judicial review, of a decision of the administrative law judge must file a written petition for review with the Board, which has been delegated the authority to act for the Secretary and issue final decisions under 29 C.F.R. Part 1979. To be effective, a petition must be received by the Board within 15 days of the decision of the administrative law judge. The petition must be served on all parties and on the Chief Administrative Law Judge. If a timely petition for review is filed, the decision of the administrative law judge shall be inoperative unless and until the Board issues an order adopting the decision, except that a preliminary order of reinstatement shall be effective while review is conducted by the Board. The Board will specify the terms under which any briefs are to be filed. Copies of the petition for review and all briefs must be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210. *See* 29 C.F.R. 1979.109 (c) and 1979.110 (a) and (b).